national lawyers guild

REVIEW

Volume 73
Number 2
Summer 2016

A journal of legal theory and practice "to the end that human rights shall be more sacred than property interests."

—Preamble, NLG Constitution

In the annals of metropolitan police terror and corruption, the city of Chicago has a legacy second to none. The Chicago Police Department ("CPD") has a history of criminality and impunity that should make any ambitious crime syndicate envious. Much of this history has become legendary.

After the Great Migration of blacks to northern industrial cities during the early twentieth century, local officials used a system of redlining to concentrate the new black population on Chicago's south side. From there, the CPD was an intrusive, omnipresent force in minority communities. During the 1960s, the CPD mobilized against the civil rights and Black Power movements. This culminated in the CPD's partnership with the FBI in the assassination of the charismatic 21-year-old Black Panther leader Fred Hampton in 1969, as Hampton lay sleeping in his bed. Hampton's murder foreshadowed the cigarette-burning, cattle-prod shocking torture regime of south side Police Commander Jon Burge, whose reign of terror led to countless false confessions and wrongful imprisonments. Over a span of decades, the CPD has cultivated a culture of everyday acts of brutality and subjection, the vast majority of which go wholly unpunished. Jon Burge represents both the exception and the rule in Chicago. He was sentenced to 4½ years in prison, which is exceptional. But considering the number of his victims and the elaborate sadism of his crimes, his punishment was woefully inadequate, which is the rule.

The great abiding mystery surrounding the CPD is how and why, after its long history of systemic violence and civil rights abuses, it has never been made to meaningfully reform. In "Cycle of Abuse: How Chicago Has Failed to Police its Police" Elizabeth Andonova explains the policies and procedures that have enabled CPD's culture of oppression, violence, and impunity to endure. Andonova describes the elaborate and often impenetrable procedural protections (known as "super due process" protections) afforded to police officers accused of misconduct. These protections are far more muscular than

Continued on the inside back cover

National Lawyers Guild Review, formerly Guild Practitioner, is published quarterly by the National Lawyers Guild, a non-profit institution, at 132 Nassau Street, # 922, New York NY 10038. ISSN 0017-5390. Periodicals postage paid at New York, NY and at additional mailing offices. Subscription rates are $75/yr for libraries and institutions; $25/yr for lawyers; $10/yr for legal workers/law students; $5/yr for incarcerated persons; add $5/yr for overseas; $6.50/single copy, and should be sent to: 132 Nassau Street, # 922, New York NY 10038. POSTMASTER: Send change of address to: National Lawyers Guild Review, 132 Nassau Street, # 922, New York NY 10038. Address all editorial correspondence and law-related poems, criticisms, articles and essays to: Editor-in-Chief, National Lawyers Guild Review, 132 Nassau Street, # 922, New York NY 10038. Unsolicited manuscripts will not be returned unless accompanied by return postage. National Lawyers Guild Review is indexed/abstracted in Westlaw, PAIS-Public Affairs Information Service, The Left Index, and the Alternative Press Index.

Elizabeth J. Andonova

CYCLE OF MISCONDUCT: HOW CHICAGO HAS REPEATEDLY FAILED TO POLICE ITS POLICE

Introduction

The Chicago Police Department ("CPD") has often faced accusations of being dishonest and corrupt. To deal with CPD's bad reputation, numerous mayors and police superintendents created, and later tried to reform, agencies tasked with holding the police department and its staff accountable. None of their efforts have succeeded thus far. Every time an agency was formed, or reformed, the public was sold a promise of more accountability, only to be invariably disappointed. These failed attempts at amelioration started in the early 1960s and have evolved into a noticeable pattern: police officers misbehave, the public expresses anger over their misbehavior, the officers' superiors make promises of change, and then there is another police scandal. The cycle repeats itself.

Recently, Chicagoans found themselves in the cycle again. On October 20, 2014, Chicago Police Officer Jason Van Dyke fired sixteen bullets into the seventeen-year-old body of Laquan McDonald. Most of them hit him post-mortem.[1] The homicide was caught on dash-cam video, which police refused to publicly release until forced to do so by a judge's order, thirteen months after the shooting.[2] The story told by police—that McDonald lunged at officers with a knife causing one of them to shoot in self-defense—was exposed as clearly false by the video footage.[3] McDonald can be seen walking down the middle of the street with his hands at his side.[4] Squad cars surround him and multiple officers exit their vehicles with guns drawn and pointed at the teen. Only seconds after exiting his vehicle, Van Dyke shoots at the teen and does not stop until his gun's magazine is empty.

Although the State's Attorney's office received the incriminating dash-cam video[5] within two weeks of McDonald's death, no criminal charges were filed against Van Dyke. Six months later, when the City Council approved a $5,000,000 settlement with the teen's family, Van Dyke was still employed as a police officer and no criminal charges had been filed against him.[6] The

---

Elizabeth J. Andonova is a criminal defense attorney in private practice in Chicago, IL. She is grateful to Professor Susan Bandes, who reviewed multiple drafts of this article and provided valuable feedback. She also thanks John Conroy, who helped spark the idea for this article, and who corresponded with her on countless occasions about its development.

settlement, according to Corporation Counsel Stephen Patton, was influenced by the dash-cam video, which he deemed an important piece of evidence against the officer.[7] Settlement notwithstanding, Van Dyke remained employed as an officer until November 24, 2015 when he was finally charged with first degree murder for McDonald's death.[8]

This was the first time that a Chicago Police officer was charged for an on-duty killing of a citizen in almost thirty-five years.[9] However, State's Attorney Anita Alvarez does not deserve the credit for it. There is no reason to believe that Alvarez would have charged Van Dyke had it not been for the public outcry over the video during her re-election campaign. As for the officers who lied along with, and on behalf of, Van Dyke, two of them were finally put on desk duty approximately nine months after McDonald's killing.[10]

Since the video's release, Chicago Mayor Rahm Emanuel has been following in his predecessor's footsteps in an attempt to regain the public's confidence. Although Emanuel claims he did not see the McDonald video until it was released and that he will be more aggressive in pursuing police reform, many people are appropriately skeptical. Many citizens suspect that the video was withheld from public release by Emanuel until the close of a highly contested mayoral race between Emanuel and Jesus "Chuy" Garcia, a more progressive candidate.[11] Countless Chicagoans have called for Emanuel's resignation and his approval ratings have plummeted in the wake of the video release.[12] A recall bill aiming to oust Emanuel has even been introduced.[13]

History is a window to the future. So far, Emanuel has promised "a comprehensive plan to fundamentally reshape our system of police accountability," yet he has not specifically discussed any reforms that are likely to work any better than those of the past. After all, he would not be the first to offer comprehensive reforms that did not deliver.[14] Within the last 60 years, Chicago has repeatedly failed to root out police corruption, and it will continue to fail in that goal unless there is a radical change in dealing with police misconduct.

Attempts at Reforming the Chicago Police Department

The Chicago Police Department's unshakable reputation for dishonesty and corruption was first challenged in 1960 when a crescendo of public anger over police misconduct peaked after news of "the Summerdale Scandal" broke out.[15] In 1958 and 1959, Summerdale District police officers teamed up with well-known burglar Richard Morrison to burgle businesses throughout the City.[16] Their scheme ended when Morrison was arrested on July 30, 1959, and decided that he was not going down alone.[17] In a 77-page confession, he detailed the police officers' involvement in the burglaries: they had picked the locations, acted as lookouts and getaway drivers, and, toward the end, even participated in the actual break-ins.[18] The following January, search warrants

were executed on the homes of the eight policemen and four truckloads of stolen goods were impounded.[19] A few days later, three more officers were indicted for altering evidence in a case against Morrison to gain him an acquittal. [20] Evidencing the politics underlying the controversy, the indictments against them were dropped because a clerk used a comma instead of a semicolon in a relevant document.[21]

The Police Commissioner at that time, Timothy O'Connor, resigned to avoid taking responsibility for failing to properly control his officers.[22] When Mayor Daley announced the commissioner's resignation, he "lauded" O'Connor's good record but added that the commissioner should have been watching his officers rather than sitting at home in front of the TV.[23] Some people believe that O'Connor's resignation was not as voluntary as it seemed, and that he was used as a scapegoat.[24] Chicago's current mayor, Rahm Emanuel, had a similar reaction after McDonald's 2014 murder, praising then-Superintendent Garry McCarthy for his contributions to policing just before announcing McCarthy's resignation.[25] Resigning in the face of major police scandals has become a CPD norm.[26]

O'Connor was replaced in February of 1960 by Orlando W. Wilson, a former dean of criminology and author of *Police Administration*.[27] Wilson immediately started implementing departmental changes at CPD.[28] He modernized the communications center, changed the colors of squad cars to blue-and-white,[29] created the Department's official motto "We Serve and Protect,"[30] and instituted the Bureau of Inspectional Services, which included the Internal Investigations Division.[31] The Internal Investigations Division focused on "ferreting out corruption on all levels," and by any means.[32] The Bureau of Internal Affairs, also known as the Internal Affairs Division ("IAD"), still exists. However, other police oversight agencies have been created as a result of IAD's ineffectiveness.[33] Although Wilson's many reforms seemed promising, within a decade serious police misconduct issues cropped up again.[34] By then Wilson had been replaced by Superintendent James Conlisk Jr.[35]

At the end of August, 1968, the Windy City hosted the now infamous Democratic National Convention ("DNC").[36] Leading up to the event there were nationwide Vietnam War protests[37] and civil rights demonstrations, which were fueled by Martin Luther King Jr.'s assassination in April of that year.[38] Despite Chicago's poor handling of protests in response to King's murder prior to the DNC,[39] as well as the fact that similar demonstrations were expected to continue wherever the DNC was held, Mayor Daley was adamant that Chicago should host.[40] In preparation for the event, Daley saturated the city with law enforcement.

Some 11,950 Chicago police officers, 5,000 Illinois National Guard members, and 5,000 army troops were readied to ensure that order would be maintained throughout the city during the DNC.[41] However, an arguably counterproductive tactic was also deployed: the city denied requests for march permits, as well as requests to allow people to sleep at public parks. Protests were inevitable and banning them effectively forced protesters to break the law.[42] When activists refused to be silenced, tension between demonstrators and police quickly mounted, culminating in a brutal clash upon Hubert Humphrey's —considered by some a "war mongerer"—election as the Democratic presidential nominee.[43] At Grant Park, police attacked a young man while he tried lowering the American flag to protest Humphrey's nomination.[44] In turn, police were pelted with rocks and other objects, which resulted in an attack on demonstrators with tear gas.[45] Soon, an all-out riot ensued.[46] As TV cameras rolled in front of the Hilton Hotel Chicago, police officers beat protesters, bystanders, and reporters,[47] seemingly indiscriminately.[48]

When it was all over, attorney Daniel Walker led a federal investigation into what had occurred during the DNC.[49] He found that the police were exhausted and provoked by protesters but that their reaction was nonetheless grossly unprofessional.[50] Walker reported that officers incited a police riot and blamed Mayor Daley for inflaming police with statements he had made earlier that year about shooting protesters at race riots.[51] Daley disagreed, stating that the police successfully defended the city.[52] Unsurprisingly, the perception of a police-induced riot against Daley's denial of any wrongdoing further damaged the already strained relationship between the public and the police.[53] Relations continued to deteriorate from there.

A little over a year after the DNC disaster, on December 4, 1969, Chicago police officers killed Fred Hampton,[54] a leader in the burgeoning Black Panther movement, when they fired "more than eighty shotgun rounds into an apartment" shared by him and several other Black Panthers.[55] Although at least one newspaper article described Hampton's death at the hands of police as a "summary execution,"[56] the State's Attorney's Office and police department maintained that the Black Panthers instigated the 3:00AM shootout.[57] One elderly African-American woman aptly called the murder of Hampton "nothing but a Northern lynching."[58]

Eventually State's Attorney Hanrahan dropped the attempted murder charges that had been levied against the surviving Black Panther members who were in Hampton's apartment (and supposedly attacked the raiding officers) on the evening of Hampton's murder, when confronted with the overwhelming ballistics evidence contradicting the CPD's version of events.[59] Instead, a special prosecutor indicted Hanrahan as well as some of the raiding officers for obstruction of justice, though all were ultimately acquitted

in a bench trial.[60] The Black community was outraged, and successfully led the effort to oust Hanrahan.[61] Even so, it took thirteen years of litigation to provide a sliver of justice for the deaths of Fred Hampton and his comrade Mark Clark, also murdered that evening. In 1983 the City finally settled with the raid's survivors and the victims' families.[62] Unsurprisingly, none of the Chicago cops who participated in the raid were criminally charged with murder or anything close to it.

In 1972, public concern over police misconduct focused on CPD's oversight agency. A Chicago Tribune investigation revealed a pattern within Internal Investigations of either outright ignoring citizen complaints against the CPD or not thoroughly investigating them (such as failing to contact key witnesses).[63] Where officers were disciplined in response to citizen complaints, it was often in the form of "suspensions shorter than those levied against policemen who take an unauthorized lunch break," even where officers were found to have inflicted serious injuries upon innocent citizens.[64]

By 1973, however, thirty-five police officers were charged in federal court for allegations including abuse, brutality, and false arrest.[65] The lawsuit also charged that "the police superintendent, the Chicago Police Board, and the City of Chicago willfully refused to investigate or punish police misconduct."[66] At the same time, citizens' groups were loudly complaining about Police Superintendent John Conlisk's overly aggressive policing tactics. The pressure finally overwhelmed Conlisk, who resigned on October 10, 1973—a few days after over a dozen policemen were indicted for a shakedown racket. Conlisk was replaced by James Rochford.[67] Like Conlisk before him, Rochford promised reform and a newly designed police accountability agency.[68]

The Office of Professional Standards

James Rochford determined that the solution for rebuilding the public's trust was through major organizational changes,[69] which included the 1974 establishment of the Office of Professional Standards ("OPS"). OPS's purpose was to "operate independently" in investigating complaints about police brutality and corruption.[70] In reality, it was not independent at all. OPS's office was within the police department and investigators reported to the police superintendent.[71] Predictably, police misconduct continued to be the norm. Although the number of police misdoings during OPS's lifetime are far too numerous to address individually, at least some are worth discussing in order to demonstrate the extent of OPS's ineffectiveness through its 33-year lifespan. The most famous of all was exposed in January 1990, when journalist John Conroy published an article detailing the heinous torture Andrew Wilson suffered in 1982, at the hands of Area 2 officers working under then Police Commander Jon Burge.[72] The shocking details were news to those whom

seldom dealt with police, but they weren't news to those within the Chicago Police Department. In November 1990, in response to complaints of torture by Area 2 officers including Burge, Gayle Shines, then Chief Administrator of OPS, sent a memo to then Superintendent of Police, LeRoy Martin, titled "Special Project Conclusion Reports (The Burge Investigation)" (hereinafter "Goldston Report").[73] Investigator Michael Goldston found that:

> the preponderance of the evidence is that abuse did occur and that it was systematic …the number of incidents in which an Area 2 command member is identified as an accused can lead to only one conclusion. Particular command members were aware of the systematic abuse and perpetuated it either by actively participating in same or failing to take any action to bring it to an end.[74]

The abuse referred to in the Goldston Report had been ongoing for 13 years—between 1973 and 1986—and Burge was repeatedly named as centrally involved.[75] However, despite the Area 2 team's egregious actions, Superintendent Martin waited an entire year after receiving the report before suspending Burge and two other officers.[76] Moreover, the City tried to bury the Goldston Report by portraying its findings as unsubstantiated.[77] Nevertheless, the evidence continued to stack up against Burge. In 1996, John Conroy published yet another article detailing the torture suffered by six other men.[78] It became painfully obvious that Burge and his officers were being protected by the Blue Wall of Silence, the same "wall" that many believe currently shields Officer Van Dyke.[79]

In 1999, three years after Conroy's article, two innocent youths were killed by Chicago police officers without justification. One of them, LaTanya Haggerty, was shot and killed when a police officer claimed to have mistaken an object she was holding for a gun.[80] Within the same 24-hour period, Robert Russ, a Northwestern University football player, was shot and killed by a police officer. Neither he nor Haggerty were armed. The cop who shot Haggerty lost her job, but the one who shot Russ got a mere 15-day suspension.[81] More police killings followed.

Between 2002 and 2004, if a police officer received an excessive force complaint, his chances of being "meaningfully disciplined"—such as receiving a seven-day suspension—were two out of 1000.[82] One appalling demonstration of how rarely discipline was imposed is the 2002 case of a firefighter living on the city's south side. He reported to OPS that a group of cops broke into his home, beat him up, and then threatened to plant drugs on him if he complained.[83] His complaint, however, was disregarded.[84] One of the officers accused, Jerome Finnigan, had by that time accrued over 70 citizen complaints. Finnigan was not disciplined for a single one.[85] Perhaps this was because, as Finnigan himself later disclosed, all it took to stop an OPS investigation was a phone call to a "high ranking member of the Internal

Affairs Division."[86] Finnigan explained that he had successfully employed this strategy when he was investigated for stealing $13,000 from someone's home.[87] However, although OPS turned a blind eye to Finnigan's misconduct, federal prosecutors were not so accommodating. In 2006, he was indicted for multiple criminal offenses.[88] Finnigan pled guilty in 2011 to tax evasion and ordering a hit on a police officer whom he feared would expose the criminal activities in which Finnigan and a group of conspiring officers were involved.[89]

On March 8, 2003, Officer Alvin Weems killed 23-year-old Michael Pleasance at the 95th Street Red Line station.[90] Pleasance was friends with a man named Anderson, who had gotten into a fight at the station. Pleasance was not involved in the fight himself and, by the time Weems shot Pleasance, Anderson was in custody. Pleasance can be seen on CTA surveillance video coming around to Weems and trying to talk to the officer right before being shot in the head. Initially, the police department claimed Weems shot Pleasance because Pleasance tried taking the officer's gun. Unsurprisingly, the Department's story unraveled when the CTA video was released per a judge's order in the wrongful death lawsuit against the CPD. The video demonstrated that Pleasance was a mere bystander of a fight that Weems was breaking up. Although OPS recommended Weems's termination, then Police Superintendent Philip Cline decided against it. Instead, Weems received a 30-day suspension, and was later promoted to detective.[91] Cline ultimately resigned from his position in 2007 for failing to discipline six drunk, off-duty police officers caught on a surveillance camera beating several innocent citizens outside a Chicago bar (discussed in further detail below).[92]

Similar cases of unchecked police misconduct continued to occur. In 2004, a female university professor was beaten by James Chevas, a police officer with more than fifty complaints filed against him.[93] The woman was charged with aggravated battery,[94] while the corresponding complaint against Chevas was determined to be "unfounded"[95] by OPS.[96] A jury disagreed. It found that the woman had been battered by Chevas and that the city had maliciously prosecuted her.[97] In 2005, OPS cleared police officers accused of sodomizing Coprez Coffie with a screwdriver, [98] even though, according to Coffie's attorney, the internal investigation revealed screwdrivers in the cars of accused officers, fecal matter in the glove compartment, and an injury to Coffie's rectum.[99] A jury again disagreed with OPS, believing Coffie, not the cops.[100] Meanwhile, that summer, pressure for reform and accountability was mounting as a number of groups, including human rights organizations, attorneys, and activists petitioned for an investigation into the Jon Burge torture scandal.[101]

In February 2007, Officer Anthony Abbate pummeled bartender Karolina Obrycka because she refused to serve the already drunk cop more alcohol.[102]

Obrycka and her boss told responding officers Peter Masheimer[103] and Jerry Knickerehm that Obrycka's attack was caught on tape and that her attacker was a Chicago police officer. Masheimer and Knickerehm omitted the latter fact in their incident report.[104] Fearing that the responsible officers would not be disciplined, Obrycka's lawyers publically released the video of her assault. In it, Abbate can be seen going behind the bar and beating Obrycka with his hands and feet.[105] Prior to the video's public release, Abbate was charged with misdemeanor battery. After it was released the charges were upgraded to felony aggravated battery.[106] Abbate was found guilty two years later and sentenced to two years of probation.[107] It would not be a stretch to assume that the only reason Abbate was held accountable was because there was a video, seen nationwide, of him beating Obrycka.[108] In this regard, his outcome sharply deviates from the norm.[109]

That same year the head of OPS resigned and the Independent Police Review Authority was formed.[110] Meanwhile, OPS was now infamous for ruling virtually all complaints against police officers as "unsubstantiated."[111]

The Independent Police Review Authority

The Office of Professional Standards was reorganized in 2007 and renamed the Independent Police Review Authority ("IPRA"), with new emphasis placed on "independent." The agency's stated purpose was to consider allegations filed against police department personnel regarding issues of "excessive force, domestic violence, coercion through violence,[112] and verbal bias-based abuse."[113] The IPRA was also responsible for investigating all "officer involved shootings, extraordinary occurrences in lock-up, and uses of Tasers."[114] Most importantly, it sought to provide "transparency to the disciplinary process."[115]

There were several ways in which the IPRA aimed to fulfill its mandate. These included: removing the agency from its place within the Chicago Police Department and providing it with subpoena powers.[116] The IPRA would also be required to issue annual progress reports as part of its goal to further agency transparency and accountability.[117] The IPRA originally moved to a space on the Illinois Institute of Technology's campus, and since the end of 2011, has resided in the historic Goldblatt Building.[118] It has also provided quarterly reports regarding its investigations, and until 2013, posted similar annual reports. By most counts, the agency seemed to be doing exactly what it had promised. However, with time, the IPRA proved that, as with its predecessors, it was not as independent and transparent as it was designed to be.

The IPRA's shortcomings are most evident in statistical analyses of investigators' reported findings (discussed in the section below). And, more recently, in emails between the IPRA and Rahm Emanuel's staff. For example, in one email, then-Chief Administrator at the IPRA, Scott Ando, emailed the

Mayor's office with a link to a website that discussed the McDonald shooting, even though the agency's main goal is to be independent of the Police Department, which works closely with the Mayor's Office.[119] Additionally, former IPRA employees have revealed that the IPRA has engaged in various tactics to make its statistics seem more promising than they actually are and that some investigators may have been required to change their findings if they found against police officers in certain cases.[120]

Is IPRA just a new moniker for OPS?

The IPRA rarely holds police officers responsible for their bad acts, and when it does the Police Board often steps in and disregards the IPRA's disciplinary recommendations. The proof is in the numbers. Since its inception in 2007, the IPRA has found only two on-duty police officer shootings unjustified.[121] The 407 other shootings were apparently justified, despite the millions of dollars doled out by the city each year in private settlements. Moreover, from 2011 to 2015, 97 percent of the 28,500 complaints filed with the IPRA resulted in no discipline for the accused officers.[122] On one hand, some might think this a sign that people are just filing meritless complaints and that the Chicago Police Department is actually operating effectively. On the other hand, those who have consistently followed the IPRA disagree. The Chicago Council of Lawyers, for example, stated that "[b]ased on its years of experience in reviewing [the] IPRA and [the Bureau of Internal Affairs], [it] believes that these statistics are the product of a faulty process, not the result of mostly meritless complaints."[123] The statistics from the IPRA's quarterly reports and the many lawsuits filed against Chicago suggest that the Council of Lawyers is correct.

The Complaint Process

Theoretically, the process by which police misconduct complaints to the IPRA are handled is simple.[124] Once the agency receives a complaint, it investigates the allegations internally and then recommends a result.[125] The process is well-delineated in Municipal Ordinance 2-57-060. If the allegation is within the IPRA's jurisdiction, the agency has the power to subpoena officers and witnesses to get necessary information.[126] Once the investigation is complete,[127] an IPRA officer may conclude that the complaint was sustained, not sustained, unfounded, or exonerated.[128] If the complaint is sustained and the IPRA makes a disciplinary recommendation, that recommendation is reviewed by the police superintendent, who then has 90 days to respond. If there is no response, then the assumption is that the IPRA's recommendation was accepted. The superintendent must explain in writing any decision to take an action that is different from the IPRA's recommendation. Within ten days, the superintendent and the IPRA's chief administrator must meet to discuss the reasons for the discrepancy.[129] If no consensus is reached, the

issue is addressed by a three-member panel of the Chicago Police Board, [130] an agency often criticized for making biased decisions in favor of police officers.[131] One of the Board's central purposes is to decide the final outcome of disciplinary cases "involving police misconduct[,]"[132] which includes conducting hearings for disciplinary actions such as officer suspensions or discharges.[133] Accordingly, the panel has significant power in determining the extent of officer discipline. In turn, the panel plays a direct role in nurturing the culture of impunity within the CPD.

The sworn affidavit requirement

Under Illinois law complainants are required to submit a sworn affidavit to the IPRA to have their case actually investigated.[134] As such, from early 2008 through the end of 2015, approximately one-third [135] of complaints filed with the IPRA were simply not investigated because complainants did not include a signed affidavit. Although individuals can file a complaint remotely, if they want their complaint to be investigated, they will eventually need to physically visit a Chicago Police Department precinct in order to sign a sworn affidavit. Based on the high rate of dismissals due to missing affidavits, it is obvious that a substantial number of individuals are unwilling or unable to comply with this requirement.

In 2009 public apprehension toward the affidavits requirement was exacerbated when the IPRA adopted a policy that its Legal Unit would start reviewing every investigation that resulted in an "unfounded" decision for evidence that the affiant made a false statement in his or her complaint.[136] The IPRA claimed that it adopted the policy to maintain the integrity of its investigative process yet the agency neglected to explain why the integrity of its process might be undermined in the first place. There is no discussion in any of its quarterly reports, for example, about an overwhelming number of false statements being uncovered. According to former IPRA investigator Lorenzo Davis, there are not many frivolous complaints filed with IPRA.[137]

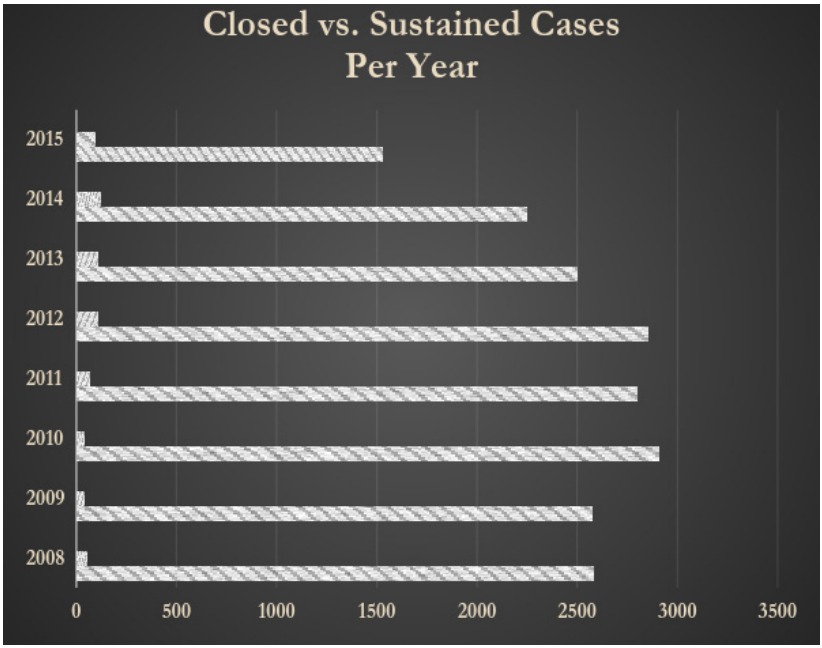
If a complaint is deemed false by the IPRA, the complainant could end up being prosecuted under the False Statements Ordinance,[138] resulting in fines of more than $1000.[139] The IPRA's chief administrator explained the rationale behind this practice: "our thinking was to take a balanced approach—treating the public similarly to the way we would handle a police officer." However, "a balanced approach" is not how police officers are treated. Police officers are given an opportunity to amend their statements to the IPRA, and they are therefore not prosecuted for inconsistencies. Moreover, the IPRA has constantly struggled with budgetary and staffing issues during its lifetime, and therefore it seems impractical to take on the additional duty of reviewing affidavits for falsehoods. The IPRA's job is to

investigate the police, not to be the police. Its decision to investigate and prosecute false statements not only shields police from otherwise legitimate disciplinary action, but actively discourages reporting. This, of course, undermines the IPRA's core purpose: holding police accountable while remaining independent from the CPD.

Statistics from IPRA's quarterly & annual reports

The IPRA is required to fulfill its transparency goals by releasing quarterly reports which "describe the number and type of complaints received, investigations opened, investigations closed, and the number of pending investigations" every three months.[140] Those reports are posted on its website. The agency is also required to provide annual reports regarding the same matters. An analysis of those reports revealed the agency's relative ineffectiveness in handling police misconduct. The IPRA rarely sustains a complaint, that is, it rarely finds in favor of the complainant, and has been fairly consistent in failing to do so throughout its brief existence.[141] (See graph below.)

In 2008, the IPRA forwarded 73 percent of the 9,773 complaints it received to the Internal Affairs Division ("IAD"). Of those cases it retained, the IPRA closed[142] 2,585 cases and only sustained 57 complaints, or 2.21 percent.[143] In 2009, of the 10,074 complaints the IPRA received, 72 percent were sent to IAD, 2,568 were retained, and of those retained only 42 cases—1.64 per-



cent—were sustained.[144] In 2010, 1.51 percent of complaints were sustained; in 2011, 2.57 percent were sustained; in 2012, 3.89 percent were sustained; in 2013, 5.48 percent were sustained; in 2014, 5.7 percent were sustained; and in 2015, 6.2 percent of retained cases were sustained. It seems improbable that in 97 percent of retained cases, the citizens' complaints were in one way or another deemed "unfounded."[145]

Only 3 percent of officers received any sort of disciplinary recommendation by the IPRA during a seven-year period. And of these, not all were disciplined. Officers are entitled to an appeals process after a disciplinary recommendation is imposed. Separately, the Superintendent of Police must approve the IPRA's recommendations before an officer is disciplined, so often an appeal is not even necessary in order for the officer to avoid discipline.

Although the numbers make it seem as if the IPRA sustained more and more cases every year, the statistics are deceiving. For example, in 2011, the IPRA started increasing its use of mediation. By agreeing to mediation, officers who are willing to admit fault receive less severe disciplinary action. Essentially, officers agree to a slap on the wrist in order to avoid more serious punishment.[146] Meanwhile, the IPRA boosts its "sustained" numbers artificially, creating a false perception of the agency's effectiveness.

Other theories have been proposed for the apparent increase in "sustained" findings. A report by the Community Renewal Society found that the IPRA's numbers may look more promising because the punishment recommendations have become more lenient. For example, a recommendation of "reprimand," a less severe punishment, was recommended at approximately the same rate as "separation" from 2008 to 2011, and was recommended twice as often from 2012 to 2014.[147]

Moreover, there are significant data omissions. First, the vast majority of cases reported to the IPRA are not investigated by the IPRA and are not publicly reported by the agency that investigates them, since they are transferred outside of IPRA. Second, among the complaints that the IPRA investigates and closes, many are inexplicably missing. For example, in 2015, the IPRA closed 2,210 cases but only reported its conclusions for 1,542. Therefore in 2015 alone 668 closed cases are unaccounted for.

Repeat offenders & the cost of ignoring malfeasance

The toll paid in human lives and city dollars due to systemic police misconduct is staggering. From 2009 to 2013, the Better Government Association found that 1,611 misconduct-related lawsuits were filed against the Chicago Police Department.[148] In the past ten years, the city paid out $610 million in police misconduct settlements.[149] In the five years before the IPRA was formed—between 2002 and 2007—taxpayers paid $27 million for ap-

proximately two dozen lawsuits stemming from police shootings.[150] This figure does not include the additional $18 million that the Haggerty family received. Notwithstanding the settlements, none of the officers involved in the shootings were fired and none were suspended for longer than one year.[151] Already this year the City Council has authorized $6.5 million to settle police misconduct claims.[152]

The IPRA's apparent reluctance to hold officers accountable is certainly troubling and calls into question the agency's stated purpose. Even worse is the fact that many officers have numerous complaints filed against them that go ignored unless or until the officer commits a serious crime. The Jerome Finnigan case, mentioned above, is an example. In Finnigan's group, another officer, Keith Herrera, helped steal thousands of dollars. Officer Herrera had 67 citizen complaints filed against him before he encountered Mr. Finnigan, but he was disciplined only twice.[153] Finnigan and Herrera are just two examples in a police department plagued by corruption and cover-ups.

In another case, Officer Daniel Bora, who shot a fifteen-year-old named Frances Bell, "acknowledged in testimony that he fired [his gun] after [Bell's] car passed and [he] was no longer a threat. [Bora] said he was aiming for the driver."[154] Thirty-one complaints have been filed against Bora, yet only one was sustained.[155] And, after Bell's injury, the IPRA still found that the officers involved acted properly.[156]

Similarly, Officer David Rodriguez shot Herbert McCarter in 1999. OPS recommended that Rodriguz be fired, since medical records revealed that McCarter was shot in the back, not in the abdomen as Rodriguez claimed. Despite OPS's recommendation and incriminating forensic evidence, Rodriguez was not disciplined. Rodriguez has had nineteen complaints—mostly for using excessive force—filed against him and not a single one ended in disciplinary action.[157] Remarkably, Rodriguez is now a sergeant earning over $ 100,000 per year.[158]

On November 13, 2007, Chicago rapper Freddie Wilson was pulled over by officers Tomislav Vidljinevic and Jason Santiago for a broken headlight. Wilson was shot 18 times after he allegedly pulled out a gun and pointed it at the policemen.[159] Witnesses disputed the story, saying Wilson was unarmed.[160] A gun found on the scene did not have Wilson's prints on it,[161] and the city settled with Wilson's family for $4.5 million because "the physical evidence at the scene contradicted officers' testimony of Wilson pointing the gun at them and holding onto it until he fell to the ground outside of his car."[162] The officers lied. They were never disciplined,[163] and both are still employed by the CPD.[164]

On June 7, 2011, 29-year-old Flint Farmer was shot in the back by Officer Gildardo Sierra.[165] This was the third time in just six months that Sierra had

shot someone, and the second time that he had killed a person. The previous January Sierra had killed a 27-year-old man.[166] In March he wounded a 19-year-old.[167] Sierra's defense was a classic "he had a gun," but it turned out to be a cellphone.[168] Sierra said he was still in fear of his life when he circled the now wounded Farmer—who was lying on the ground—and shot him three more times.[169] The Cook County Medical examiner who performed the autopsy said the last three shots were the fatal ones.[170] The police department found all of the shootings justified, despite a video which documented that Sierra shot Farmer in the back while Farmer was lying on the ground. Sierra has at least nine complaints against him, only one of which was sustained, and he's still on the City's payroll as a police officer.[171] The IPRA referred all three of Sierra's shootings to the State's Attorney's office, which refused to bring criminal charges.[172] Ultimately, despite arguing that Sierra had acted properly, the city settled with Farmer's family for $4.1 million.[173]

On January 7, 2013, Officers Kevin Fry and Lou Toth were on a routine patrol when they spotted a car that had been reported in a recent carjacking. Inside the car was Cedrick Chatman, who fled almost immediately after seeing the officers. While fleeing, he was shot by Fry. Initially, the officers claimed that Chatman pointed something at them. However, during a civil deposition in 2014, their story changed. When Fry was asked, "[b]ut he never pointed anything at you or Officer Toth on Jan. 7, 2013, correct?," he responded "correct." Fry has had thirty complaints[174] filed against him, and Toth has had thirteen. None of the complaints against either officer have been sustained.[175] And, despite his admission, Fry is still employed as a police officer today.[176]

In 2013, a retired judge gave a video to a magazine that showed Officer Marco Proano shooting into a car of teenagers. The city settled the case for $360,000 in 2015. This was not the first time the city was held liable for Proano's negligent actions. In 2011, Proano shot and killed a 19-year-old. In that case, the IPRA found no fault. However, a jury awarded the deceased's mother $3.5 million in damages. However, to the jury's surprise, the presiding judge overturned the verdict because of confusion over a "special interrogatory" on the verdict form.[177] Like other repeat offenders within the CPD, Proano received nine complaints within a four-year period but was never disciplined by the IPRA.[178] The IPRA's investigation into Proano's killing of the 19-year-old took two years to complete despite the IPRA's official policy of limiting investigations to six months.[179]

The examples above are just a glimpse into the high costs of ignoring police misconduct. If the IPRA employed its powers to appropriately discipline officers with patterns of misconduct, the city might not have to pay out so much in legal fees. These expenses are doubly significant because they reinforce the police's blue wall of silence. Since officers are generally not

personally liable in wrongful death and police misconduct civil suits, they are in no way incentivized to breach the wall. For officers who are prone to misbehavior, they are rewarded—by escaping disciplinary action—when they use this silence to protect each other from accountability.[180]

When agencies tasked with police accountability ignore citizen complaints, especially complaints revealing habitual offenders,[181] it is both dangerous for the public and expensive for the city. The lawsuits filed against police officers alone cost taxpayers millions. But of course, the costs reach beyond mere dollar amounts. The Chicago Police Department has long-struggled with worrisome police behavior. Trust in police officers naturally deteriorates when citizens see that police officers are continually shooting and killing their community members. The IPRA was designed to decrease the prevalence of police misconduct. It is clear that the agency has failed.

Super due process, the FOP, and the police bill of rights

In addition to police accountability agencies' failures to redress police misconduct, another group has made it exceedingly difficult to "police the police." The Fraternal Order of Police, Chicago Lodge No. 7 ("FOP" or "the Lodge") has been the collective bargaining agent for the Chicago Police Department since 1981.[182] The FOP is an additional barrier to reform and accountability in two significant ways. First, it controls and distorts the narrative around misconduct. Second, and most importantly, the FOP avoids accountability through its city contract.

The FOP makes a significant effort to shape narratives of police misconduct incidents to protect officers. Current FOP spokesman, Pat Camden, represents the institutional voice tasked with delivering FOP's spin. According to one journalist, Camden has developed a strategy to reach out to media after a shooting in order to provide his version of events first.[183] In 2012, Camden was the first in line to report a shooting and, unsurprisingly, immediately defended the officer's actions. According to Camden, Jamaal Moore was an armed robbery suspect who was shot by police after crashing a SUV, and then, presumably, threatening police.[184] A similar narrative was provided by the police department.[185] In finding the shooting justified, the IPRA officer—who had never once recommended discipline in 159 misconduct investigations[186]—followed the FOP rhetoric.[187] However, video footage contradicted the official narrative and ultimately led to Moore's estate receiving $1.25 million in a settlement. In addition, the judge who presided over the case found that the video evidence "undercuts" the official narratives promulgated by the FOP and officers involved.[188]

The same year, following the murder of Rekia Boyd, Camden reported that Officer Servin, who killed Boyd, "was in fear for his life."[189] It later turned

out that Servin's claim—that he was threatened with a gun—was false.[190] More recently, regarding the murder of Laquan McDonald, Camden stated that Van Dyke shot McDonald only after he was put in fear of his life—when the teen lunged at him with a knife.[191] Unsurprisingly, this claim was also false.[192] After the release of video evidence contradicting Camden's recital of events, Camden admitted that he had "no idea where [his official statement] came from."[193] An analysis by the City Bureau and *Chicago Reader* of other police-involved shootings found that Camden has provided preliminary narratives of this sort in at least thirty-five cases, fifteen of which included crucial details later proved false.[194]

A former Los Angeles Police Department chief commented on the danger of police unions acting so carelessly after excessive force incidents: "The growing strength of police unions over the last 20 years has given them a feeling of impunity and arrogance that their only job is to protect the police officer regardless of what they've actually done."[195] This seems to be true for the Chicago Lodge, and it seems to be swaying internal, as well as independent, misconduct investigations. The LAPD chief noted that such preliminary narratives amount to the "the best definition of interfering with an investigation," excoriating the city's administration for being complicit in such obstructive tactics.[196] Although it is understandable that the FOP would first and foremost protect the interests of the officer it represents, the FOP is often too generous in so doing.[197]

The FOP's role in obstructing justice for victims who suffer police misconduct and their families is appalling. However, the FOP rhetoric may not influence citizens' lives as much as the contract it has with the city. While the IPRA deserves much of the blame for its ineffectiveness in curbing police misconduct, the collective bargaining agreements ("CBA") of the Chicago police play a significant role as well. Of chief importance, the CBA severely constricts the way officers can be investigated and disciplined. By including provisions that provide officers with extraordinary protections when they are investigated for misconduct, the FOP has handicapped the public's ability to hold the police accountable. Similar provisions did not exist in the 1960s when the first police accountability agency was founded.[198] According to the FOP president, if the provisions were not in the contract, people would be discouraged from becoming officers. Yet there is no objective data to support this statement . Moreover, the underlying logic of such a claim belies the effectiveness of the provisions: police officers should not be allowed to act with impunity in order to encourage others to become officers. If such provisions are necessary, one must wonder what kinds of individuals are being recruited. Police officers—or any other type of public servant—averse to liability for misconduct are exactly the type of people who should be discouraged from becoming officers.

The Chicago Police Department's CBA contains a "Bill of Rights," and Article Six details a number of "super due process" terms. These "super due process" terms shield officers from the routine types of investigations experienced by a normal citizen when he or she has harmed another person. According to the FOP president, such provisions are necessary because "officers' lives are on the line" and because "false and unproven allegations" are often levied against them.[199] Notably, however, he provided no evidence that police face a high risk of "false and unproven allegations." Importantly, Illinois also has codified super due process provisions within the "Uniform Peace Officers' Disciplinary Act."[200] The following are some of the more notable provisions contained in both the CBA and state law.[201]

Interview procedures

Prior to an officer's interview with the IPRA, he must be provided information about the lead and secondary interviewers, as well as anyone else that may be present.[202] Once the interview starts, it is expected that only one interviewer will question the officer at a time.[203] If the second interviewer has questions, he is expected to wait until the other interviewer has finished. No more than two parties from the IPRA or IAD may be present during the questioning unless authorized by the officer.[204] In contrast, there is no limit on how many parties may be present to support the interviewee. For example, when the officer who shot Jamaal Moore appeared for her IPRA interview a year after the shooting, she was accompanied by an entourage of lawyers and union representatives.[205] This interview procedure minimizes the stress on the officer while permitting unlimited administrative support, in sharp contrast to routine police interrogations of criminal suspects.

Content disclosure

The CBA makes it easy for officers to craft a story prior to their interrogation by requiring that officers be provided with, in writing, the nature of the complaint against them, as well as the names of all complainants.[206] In certain ways, this provision almost explicitly provides officers with an opportunity to lie. Sections L and M of the CBA require that an officer must be given a "copy of the portion of any official report that purportedly summarizes his statement before the interrogation."[207] If there is video evidence of the reported incident, the investigating agency has the option to present it to the officer. However, if the officer has not been allowed to watch the video prior to giving his statement, he cannot later be held liable for making a statement that contradicts the recording.[208] The only way an officer can be held liable is if he was first provided with an opportunity to "clarify and amend" his original statement after he is shown the video or audio evidence and if his statement is "material to the incident under investigation."[209] Noth-

ing about this provision bars an officer from clarifying and amending his original statement to be consistent with the actual evidence. This does not mean the officer will necessarily admit fault. It only means that his narrative will be less obviously false. In this way, officers are implicitly encouraged to contradict themselves in order to bolster their credibility in an internal misconduct investigation.

Meanwhile, ordinary citizens are afforded no such protection during criminal investigations. Once a citizen makes an inculpatory statement, it cannot be changed later on to accord with other evidence. To the contrary, the contradictions and video evidence will be used against that person, barring, perhaps, a constitutional violation. The same should be true with internal police misconduct investigations. The pertinent issue should always be whether misconduct occurred, not whether the officer was given an opportunity to see any definitive evidence against him which could undermine his version of events. Furthermore, if an officer lies there is no legitimate reason for not holding him accountable. Interestingly, if a citizen makes a sworn statement to the IPRA about officer misconduct there is no "clarify and amend" provision to protect him or her before the IPRA. In this scenario, if the IPRA suspects that the statement is untruthful it is turned over to a State's Attorney.

Both the "clarify and amend" provision and the prohibition on holding officers accountable for lying need to be repealed. They serve no benefit other than to shield culpable and untrustworthy officers. Further, they fortify the wall of silence because, as with the lack of accountability for lawsuits for which officers do not pay out of pocket, a lack of accountability for making false statements only incentivizes officers to be untruthful.

Timing

In 2011, Chicago Police officers were granted the privilege of a twenty-four-hour cooling off period from their involvement with a shooting until they must speak to IPRA investigators.[210] Officers also are only interviewed after a "proper sleep cycle," and during a "reasonable time." Preferably, interviews will happen only when officers are already scheduled to be on duty and during daylight hours.[211] Again, citizens are hardly afforded the same protections. Officers should be required to give at least a preliminary statement immediately after a use of force allegation is made.

In fairness, psychological research has shown that memory impairments during the first twenty-four hours following a shooting may result in less accurate statements than if officers are given that time to process the event and get some sleep.[212] On the other hand, this is a luxury that is never afforded ordinary citizens. And, unfortunately, the twenty-four hour period allows officers to coordinate stories with each other, destroy evidence, and

intimidate witnesses. These are all issues that were seen to some degree in the Abbate and McDonald cases. In both cases, officers who had information about what occurred stayed mum or tried to change evidence.[213]

Interrogation "recesses" are also part of the super due process afforded to officers. The CBA calls for "reasonable interruptions permitted for personal necessities," which include telephone calls—plural.[214] The reason that police officers immediately separate suspects and do not allow them to freely use cellphones is to keep them from manipulating the narrative surrounding an event. For the same reasons, police officers should not be allowed to take breaks to potentially call other witnesses to corroborate their stories.

Arbitration

One major way that the CBA impacts police discipline is by its arbitration provision. Officers facing discipline are permitted to have disciplinary recommendations reviewed by an independent arbiter. If the officer so chooses, he may go in front of an arbitrator to present both a written and oral argument to argue against a disciplinary finding for a suspension. This means that (1) the IPRA, IAD, or CPD has already recommended discipline, which was (2) reviewed by the superintendent and approved, and, finally, (3) reviewed by yet another party, the arbitrator. If the city loses in arbitration, it is responsible for paying the costs of the arbitration.[215] In other words, citizens pay when officers want to challenge even low-level disciplinary action, such as one-to ten-day suspensions. As Northwestern University professor Max Schanzenbach recognized, "The incentives of the chief of police on down are further dampened by the knowledge that anything they do can be undone easily in arbitration … [s]o they have these cops well known to have numerous citizen complaints and settlements paid out for them, but they're not dismissed from the force."[216] The remedies available to an officer only become more extensive as a suspension period increases or when separation is recommended.

Destruction of misconduct records

The issue of records destruction is currently being litigated.[221] In 2012, the FOP learned that CPD had police officers' records dating back to the late 1960s, in violation of the CBA. The FOP sued when the CPD refused its request to destroy the records.[222] The outcome of the case is significant, as it may affect an ongoing Department of Justice investigation into the CPD.[223] Moreover, a ruling in favor of the FOP may thwart future efforts to create an early intervention system that aims to spot troublesome officers based on their disciplinary history as well as exoneration efforts for those citizens wrongfully convicted due to police misconduct.

As former federal prosecutor Michael Muller said, "true reform will only come when the department and city investigate their officers as thoroughly

as the people they shoot."[224] It is critical that the super due process provisions listed above are eliminated when the FOP CBA contract is up for negotiation in 2017. These super due process provisions serve to cripple attempts at thoroughly and accurately investigating police misconduct. Lastly, if the provisions remain, it is unlikely that any agency replacing the IPRA will have any more success in reforming the Chicago Police Department.

Breaking the cycle: Necessary reforms

The authority that is responsible for disciplining police officers needs to be truly independent and to have the power to actually discipline, not just give recommendations that can be overturned. Although the IPRA makes disciplinary recommendations, these recommendations can be vetoed by both the Police Superintendent and the Police Board.[225] These multiple levels of review, including arbitration, of the IPRA's recommendations render the agency impotent. If a police officer has a complaint sustained against him and the IPRA decides he should be disciplined, it could be a long time before punishment—if there is any—is actually imposed. This dilutes the deterrent effect that punishment serves. Police officers who misbehave need to be disciplined as soon after the offense as possible and should not have the ability to waste time and taxpayer money through the invocation of an unnecessarily lengthy appeals process.

Holding Officers Accountable

Perhaps the biggest roadblock to holding police accountable is the CBA. Without a doubt, it needs to be significantly changed when it expires next year.[226] Furthermore, the contract must be made available to the public before becoming finalized, and the public must be provided an opportunity to give feedback. Most people have not read the CBA and, prior to the McDonald case, few knew of its many protective provisions. A policy should be instituted wherein the public elects a body of people to represent the interests of the citizenry, which will be given a seat at the negotiation table. At the beginning of each contract term, new representatives of this citizen review board should be elected in order to avoid forming too close relations with the FOP.

Another CBA change that could be useful was proposed by Alderman Howard Brookins, who suggested that the contract should contain a risk management clause that allows for the termination of officers who exhibit patterns of misconduct.[227] In response, Dean Angelo, FOP president, argued that such a provision would discourage people from pursuing a career in law enforcement, a "job less and less people want."[228] According to the most recent data, however, many people still seek such a career—more than 14,000 applied for the city's last entrance exam, which ended in January of 2016.[229] More importantly, firing officers who repeatedly abuse the citizenry

is simply good public policy. Officers are not put into the powerful positions they hold merely to lower the unemployment rate—they exist to provide a public service. If an officer is repeatedly harming citizens, that officer is no longer serving their intended purpose.

Abolish the Sworn Affidavit Requirement

It is crucial that citizens who want to file a complaint against police officers not be required to sign a sworn affidavit. The affidavit requirement, which is required by both Illinois law and the CBA agreement, has caused nearly 40 percent of IPRA investigations to be closed without proper review.[230] Although the IPRA's Chief Administrator can set aside the affidavit requirement, the Police Accountability Task Force, appointed by Rahm Emanuel in the wake of the McDonald shooting, found that the Chief Administrator rarely did so.[231] The Task Force recommended that the affidavit requirement be repealed.[232] In response to this recommendation, the Subcommittee on Police Professionalism is reviewing a senate bill proposing that the affidavit requirement be removed from the Police Officers' Disciplinary Act. In the event that the requirement is abolished, the FOP will have to remove that provision from the CBA. The removal from the CBA should be a top concern for city council members during the next round of contract negotiations.

Sworn affidavit requirements serve as an unnecessary burden on complainants who may not wish to sign an affidavit for many valid reasons. Perhaps the most obvious is that complaints filed with the IPRA are about police misconduct, which can rightly cause fear of retaliation—by either the police officer involved or his peers. Another source of retaliation might come from the IPRA and the prosecutors' office. When the IPRA instituted a policy of investigating the sworn affidavits of complaints they deemed "unfounded," they warned that such complaints would be investigated by their legal unit and, if fabrication or fraud was found, prosecuted. The threat of criminal charges, particularly amongst a group that may at the time of filing a complaint feel especially mistrustful of police, likely serves as a chilling effect. The benefits of a sworn affidavit—to deter false complaints—are undeniably outweighed by the costs. That is, not addressing legitimate complaints of misconduct. Other cities with police accountability agencies do not have sworn affidavit requirements and have not reported an influx of false complaints.[233] In Seattle, for example, not only is there no sworn affidavit requirement, but citizens are also permitted to file complaints anonymously.[234] In contrast, Chicago's CBA prohibits anonymous complaints except for those individuals alleging a criminal code violation of either state or federal law.[235] Abolishing the sworn affidavit requirement and adopting a model that is similar to the one used in Seattle would be an important step in the right direction.

Video Publishing Guidelines

Videos of officer misconduct should be released within fourteen days. It should not take a judge's order and more than a year for Chicago to release similar videos, as is often the case in Chicago. By comparison, in Cincinnati and Seattle, law enforcement agencies release videos of public encounters with police within 24–48 hours.[236] Fourteen days is a leisurely pace when juxtaposed with other major U.S. cities such as these.

Early Intervention Systems & Intolerance for Misconduct

Officers with patterns of misconduct should be fired. It is estimated that approximately 10 percent of police officers comprise approximately one-third of police misconduct lawsuits.[237] As discussed above, such lawsuits cost Chicago taxpayers millions every year. More egregious than the economic cost is that, often, officers with a significant number of complaints on their record are never disciplined. Repeat offenders should be closely monitored. In addition, officers who protect such wrongdoers should also be disciplined for their complicity. Staying silent or, worse, outright lying should result in immediate discipline.[238] Unfortunately, the historical pattern reveals that officers are extremely fearful of being ostracized by their fellow officers. It should be made clear to officers that cooperation with investigations into officer misconduct is for the health of the entire community, while perpetuating the blue wall of silence will be punished.

The next iteration of a police oversight agency will need to begin keeping a detailed account of past misconduct, in order to ensure that repeat offenders are being disciplined accordingly. To this end, the CBA provision that requires the destruction of disciplinary records within five years must be abolished. The new oversight agency must be required to include the identities of police officers when it publishes its quarterly and annual reports. The agency should also be required to include in its reports both its sustained and unsustained findings. There is no legitimate reason for secrecy about such findings. The IPRA, as well as whatever agency comes after it, should be releasing summaries for all of its findings—including those that are deemed "unfounded"—because it is the officers that the IPRA has not held liable who have turned out to be some of the worst offenders in the police department.

The IPRA must also be held more accountable for its effectiveness in curbing police misconduct. Any oversight agency's work should be reviewable by the public and independently audited. The auditor should be elected by the public and subject to a term limit to avoid becoming too closely acquainted with the people it monitors, which is one of the (many) reasons that police department internal affairs divisions have become such notorious failures.

Conclusion

At the beginning of the 1960s, Chicago was recovering from the Summerdale Scandal. Summerdale brought with it changes in policing that included the introduction of what is currently known as the Bureau of Internal Affairs. Then, throughout the 1970s, newspaper reports of police brutality and a federal lawsuit led to the creation of the Office of Professional Standards. The numerous scandals that took place during its thirty-three-year lifespan—including torture at Area Two, a group of thugs led by Jerome Finnigan sowing chaos primarily on the city's south side, and, finally, the beating of a bartender by a cop easily twice her size—shuttered that agency, at least in name, to make room for the Independent Police Review Authority. Today, Chicago is again at the stage of the police misconduct cycle where citizens are promised reforms and city officials are forced to make at least some changes. Just like Timothy O'Connor after Summerdale, Matt Rodriguez in 1997,[239] and Philip Cline after Abbate, Chicago's current police scandal has forced the most recent superintendent, Garry McCarthy, to "resign." With McCarthy's resignation, Chicagoans saw yet another mayor borrowing from what Craig Futterman called a "familiar playbook."[240] "After each and every one of these scandals, we've never had the political courage to address the underlying issues."[241] However, we can start now. If Chicago is ever going to improve policing, merely throwing big names under the bus as a sort of reform-window-dressing will not be successful. The police abuse cycle described above has established as much.

"Today we stand together as a city to try and right those wrongs," Mayor Rahm Emanuel promised Chicagoans, "and to bring this dark chapter of Chicago's history to a close."[242] This was during a speech on April 14, 2015, in which he discussed the $5.5 million in reparations the city decided to pay to victims of the Area Two torture team.[243] The message's hopeful language was rightly met with skepticism by residents, who have heard the same rhetoric before. And indeed, one day later, another $5 million was promised to the family of Laquan McDonald for the teen's unjustified murder. The following week, Dante Servin—the officer who shot and killed Rekia Boyd, an innocent black woman, by recklessly firing a gun over his shoulder—was acquitted.[244] The mayor's romanticisms about closing dark chapters are not enough; we clearly need to burn the whole book and start afresh.

Reforming the Chicago Police Department will not be an easy task. The City has been plagued with various forms of misconduct throughout its history, which dates back to the 1800s. It would be foolish to suggest that merely implementing the recommendations contained in this article would cure problems that have been pervasive for decades upon decades. Nevertheless, it is important to make continued reforms. Reform must begin with

agencies currently pretending to hold officers accountable for misbehavior. The IPRA, for instance, has been accused of being far too lenient in addressing police wrongdoing. Other agencies, such as the Bureau of Internal Affairs, the Fraternal Order of Police, the Chicago Police Department, and the Police Board are all responsible for their ineffectuality as well. If the agencies tasked with handling the so-called "bad apples" chopped down the rotten apple tree, it would instill a feeling in citizens that they can begin to trust the system. Moreover, the public must play a central role in reforming the way such agencies operate and the process of weighing other alternative avenues for reform as well.

_____

NOTES

1. Carol Marin & Don Mosely, *Judge Orders Release of Video Showing Shooting Death of Chicago Teen*, NBC CHICAGO (Dec. 17, 2015), http://www.nbcchicago.com/news/national-international/Judge-to-Decide-on-Release-of-Laquan-McDonald-Video-351741261.html; *Dash-Cam Video Released Showing Laquan McDonald's Fatal Shooting*, NBC CHICAGO (Dec. 17, 2015), http://www.nbcchicago.com/news/local/Police-Release-Disturbing-Video-of-Officer-Fatally-Shooting-Chicago-Teen-352231921.html.
2. Brandon Smith, a journalist, filed a lawsuit after his Freedom of Information Act request was denied by the Chicago Police Department. On November 19, 2015, Judge Franklin Valderrama gave the City until November 25th to release the footage. *See* Sam Levine, *Chicago Police Really Didn't Want to Release Video of a Cop Shooting Laquan McDonald 16 Times*, THE HUFFINGTON POST (Nov. 25, 2015), http://www.huffingtonpost.com/entry/chicago-laquan-mcdonald-video_us_565603e0e4b079b2818a06f6 [hereinafter Levine, *Chicago Police*].
3. Fraternal Order of Police spokesperson Pat Camden said that McDonald lunged at one of the officers with the knife, which is what led Van Dyke to shoot him. *See Teen Shot, Killed by Police Officer on Chicago's Southwest Side*, NBC CHICAGO (Oct. 21, 2014), http://www.nbcchicago.com/news/local/chicago-shooting-4100-south-karlov-279884562.html.
4. Jason Meisner, *The Lingering Questions in Laquan McDonald Shooting Case, Video*, CHIC. TRIB. (Dec. 5, 2015), http://www.chicagotribune.com/news/ct-chicago-cop-shooting-laquan-mcdonald-faq-met-20151204-story.html.
5. *See* Levine, *Chicago Police*, *supra* note 3.
6. The family had not filed a lawsuit at the time of the settlement. *Id*.
7. Periodicvideos, *Corporation Counsel Stephen Patton on Proposed $5 Million Settlement*, CHIC. TRIB. (Apr. 13, 2015), http://www.chicagotribune.com/news/chi-corporation-counsel-stephen-patton-on-5-million-settlement-20150413-premiumvideo.html.
8. *See* Levine, *Chicago Police*, *supra* note 3. *See also* People's Factual Proffer in Support of Setting Bond, People of the State of Illinois v. Jason Van Dyke, No. 15-127823, (Ill. Cir. Ct. Nov. 24, 2015), *available at* https://www.scribd.com/doc/291013770/Proffer-in-Jason-Van-Dyke-case#fullscreen. Van Dyke was suspended without pay from the Chicago Police Department. He was later hired by the Fraternal Order of Police as a janitor, which is the position he currently holds while awaiting the commencement of his murder trial. *See* Catherine Thorbecke, *Chicago Police Officer Charged with Murder of Teen Laquan McDonald Hired by Police Union*, ABC NEWS (Mar. 31, 2016), http://abcnews.go.com/US/chicago-police-officer-charged-murder-teen-laquan-mcdonald/story?id=38052352.
9. Whet Moser, *What Happened the Last Time a Chicago Cop was Charged with Murder*, CHIC. MAGAZINE (Nov. 24, 2015), http://www.chicagomag.com/city-life/November-2015/What-Happened-the-Last-Time-a-Chicago-Cop-Was-Charged-With-Murder/.
10. Stacy St. Clair, Jeff Coen, & Todd Lighty, *Officers in Laquan McDonald Shooting Taken Off Streets—14 Months Later*, CHIC. TRIB. (Jan. 22, 2016), http://www.chicagotribune.com/

news/opinion/editorials/ct-chicago-police-laquan-mcdonald-officers-20160121-story.html (CPD will not state exactly when the officers were put on administrative duty).

11. *See, e.g.*, John Kass, *If Police Shooting Video Had Been Released Sooner, Would Emanuel Be Mayor?*, CHIC. TRIB. (Nov. 26, 2015), http://www.chicagotribune.com/news/ct-laquan-mcdonald-emanuel-kass-met-1126-20151125-column.html.

12. Eugene Scott, *Protestor Calls for Rahm Emanuel's Resignation at Mayors Conference*, CNN (Jan. 20, 2016), http://www.cnn.com/2016/01/20/politics/protester-rahm-emanuel-mayors-conference/; Dan Hyman, *Meet the Man Trying to Take Down Rahm Emanuel*, ROLLING STONE (Jan. 7, 2016), http://www.rollingstone.com/politics/news/meet-the-man-trying-to-take-down-rahm-emanuel-20160107; Sarah Schulte, *Rahm Emanuel's Approval Rating Continues to Plummet, New Poll Says,* ABC 7 NEWS CHICAGO (May 9, 2016), http://abc7chicago.com/politics/poll-rahm-emanuels-approval-rating-continues-to-plummet-/1330767/.

13. David A. Graham, *Two Questions About Rahm Emanuel and Chicago Police Violence*, THE ATLANTIC (Jan. 14, 2016), http://www.theatlantic.com/politics/archive/2016/01/rahm-emanuel-chicago-police-violence/424197/.

14. Rahm Emanuel, *Rahm Emanuel Op-ed: Next Steps on Our Road to Reform*, CHIC. TRIB. (May 13, 2016), http://www.chicagotribune.com/news/opinion/commentary/ct-rahm-emanuel-ipra-perspec-20160513-story.html (The plan for reform is supposed to be unveiled at a City Council meeting to be held on June 22, 2016. He has promised a new police oversight agency that will itself be overseen by various groups, but the details of what changes will take place are vague at the moment.).

15. When the Summerdale Scandal was discovered, one citizen wrote the following to the Daily Defender newspaper: *"It makes me laugh when I see where the Mayor, officials and officers are so shocked and surprised about the police scandal when every man, every woman and every child knows about our police department. Even other cities know about the reputation of the Chicago police. . . . Sure, there are some good police officers here, but very few honest ones."* Earl King, *The People Speak: Screen More Cops*, DAILY DEFENDER, Feb. 10, 1960, at A11.

16. The group burglarized a jewelry store, furniture store, tavern, shoe store, tire and auto repair place, marine supply store, and more. Seven policemen—Frank Faraci, Al Karras, Sol Karras, Alan Brinn, Henry Mulea, Patrick Groark, Jr., and Alan Clements—would meet with Richard Morrison on a nightly basis to discuss the next location they wanted him to burgle. The eighth cop, Peter Beeftink, was considered "dumb" and, therefore, was not involved in any of their planning sessions. Then, they would tip off police officers from the Detective's North Side Bureau on where to find Morrison. Morrison would be forced to give money to the detectives to avoid burglary charges, and then the detectives would split the extortion money with the Summerdale policemen. RICHARD C. LINDBERG, TO SERVE AND COLLECT: CHICAGO POLITICS AND POLICE CORRUPTION FROM THE LAGER BEER RIOT TO THE SUMMERDALE SCANDAL 297-300, 302 (Praeger, 1st ed. 1991) [hereinafter LINDBERG, TO SERVE AND COLLECT]. Note: Faraci and Groark had previously been reprimanded and suspended for giving their weapons to another robber. *Id.* at 303.

17. *Id.* at 300.

18. *Jury to Hear Burglar Who Triggered Cop Scandal*, DAILY DEFENDER (Feb. 9, 1960), at A11; *see also* LINDBERG, TO SERVE AND COLLECT, *supra* note 19, at 297-300.

19. LINDBERG, TO SERVE AND COLLECT, *supra* note 19, at 302.

20. *Id.* at 304.

21. *Id.*

22. *Id.* at 305.

23. *Id.* ("I should have asked him why he wasn't running around checking on his policemen at night instead of sitting home watching TV," said Daley.).

24. *Id.* (O'Connor has been quoted as saying, "Somebody has to be the sucker and it could be me.").

25. In reality, McCarthy was fired. David A. Graham, *The Firing of Chicago Police Chief Garry McCarthy*, The Atlantic (Dec. 1, 2015), http://www.theatlantic.com/national/archive/2015/12/garry-mccarthy-fired-chicago/418203/.

26. James Conlisk, Jr. (1967-1973) resigned at a time when Chicago police officers were being accused of extortion; Matt Rodriguez (1992-1997) resigned amid corruption and brutality allegations; Philip Cline (2003-2007) resigned in part due to the Anthony Abbate bartender beating and code of silence scandal. Andrew Fan, *Many Superintendents Have Tried to Reform the Chicago Police (TIMELINE)*, DNAinfo (Dec. 18, 2015, 8:40 AM), https://www.dnainfo.com/chicago/20151218/downtown/many-superintendents-have-tried-reform-chicago-police-timeline.

27. Lindberg, To Serve and Collect, *supra* note 19, at 307.

28. Robert Wiedrich, *Orlando W. Wilson Looks Back on His 7 Years of Achievement*, Chic. Trib., June 18, 1967, § 1, at 1, *available at* http://archives.chicagotribune.com/1967/06/18/page/1/article/orlando-w-wilson-looks-back-on-his-7-years-of-achievement/index.html; *Inside the CPD, History,* Chicago Police Department, portal.chicagopolice.org/portal/page/portal/ClearPath/About%20CPD/History (last visited Mar. 15, 2016).

29. Prior to this change, squad cars were black and white with blue mars; now, the squad cars are blue and white with red mars lights. *Inside the CPD, History,* Chicago Police Department (last visited Mar. 15, 2016), portal.chicagopolice.org/portal/page/portal/ClearPath/About%20CPD/History.

30. *Id.*

31. Lindberg, To Serve and Collect, *supra* note 19, at 310.

32. *Id.* at 311 ("Wilson's mandate to these agencies was simple: end corruption by whatever means necessary.").

33. *See, e.g.*, Independent Police Review Authority, http://www.iprachicago.org (last visited Feb. 18, 2016) (Any allegations that don't fall within IPRA's jurisdiction are referred to the Chicago Police Department's Internal Affairs Division. Issues like "criminal misconduct, operational violations, substance abuse, and off-duty incidents that warrant department oversight" would likely fall under the IAD's jurisdiction. Depending on the allegations in the complaint, it may simply be forwarded over to the employee's immediate supervisor. This is especially likely if the complaint will lead to "less serious consequences." Otherwise, it stays with IAD for investigation, where an investigator is supposed to contact the complainant and witnesses, collect relevant evidence, and interview the accused officer. Notably, IAD is wholly a part of the police department, which means that serious complaints like excessive force and illegal arrest are being investigated within the department. This kind of internal investigation has long been criticized by scholars and citizens alike as leading to biased results in favor of police officers.).

34. Lindberg, To Serve and Collect, *supra* note 19, at 311.

35. Kenan Heise, *J.B. Conlisk, Superintendent of Police During Stormy '60s*, Chic. Trib., Oct. 2, 1984, § 2, at 6, *available at* http://archives.chicagotribune.com/1984/10/02/page/22/article/j-b-conlisk-superintendent-of-police-during-stormy-60s.

36. Haynes Johnson, *1968 Democratic Convention: The Bosses Strike Back*, Smithsonian Magazine (Aug. 2008), http://www.smithsonianmag.com/history/1968-democratic-convention-931079/?no-ist; Ron Briley, *Democratic National Convention*, *in* 3 Revolts, Protests, Demonstrations, and Rebellions in American History: An Encyclopedia 1022-23 (Steven L. Danver ed., ABC-CLIO, 2011) [hereinafter Briley, *Revolts*].

37. Briley, *Revolts*, *supra* note 36, at 1022-23; William F. Jasper, *Recreating Riots*, New American (Aug. 31, 2008), http://www.thenewamerican.com/usnews/politics/item/2413-recreating-riots (Additionally, riots and demonstrations nationwide led to more than 50 deaths in 1968.).

38. James Coates, *Riots Follow Killing of Martin Luther King Jr.*, Chic. Trib., http://www.chicagotribune.com/news/nationworld/politics/chi-chicagodays-kingriots-story-story.html (last visited June 16, 2016).

39. *E.g.*, Mayor Richard J. Daley's order for police to "'shoot to kill' suspected arsonists and to 'shoot to maim' suspected looters." 4 INT'L ENCYCLOPEDIA OF THE SOCIAL SCIENCES, 369-72 (William A. Darity ed., 2nd ed. 2008); *see also* Heise, *supra* note 38.
40. FRANK KUSCH, BATTLEGROUND CHICAGO: THE POLICE AND THE 1968 DEMOCRATIC NATIONAL CONVENTION (2008).
41. *Id.*
42. Some protestors, especially those from out of town, were dissuaded by Daley's firm hand admonishing dissent, were dissuaded from coming to Chicago, but many others were not. Frank Reuven, *Chicago: A Post-Mortem*, *in* AMERICAN DECADES PRIMARY SOURCES: 1960-1969, 412-16 (Cynthia Rose ed., 2004).
43. Briley, *Revolts, supra* note 36, at 1009-1017; Mark Ebner & Lloyd DeGrane. *Guns 'n daisies*, SPY MAGAZINE 10, no. 5: 56. (1996), MasterFILE Complete, EBSCOhost (accessed March 12, 2016).
44. KUSCH, *supra* note 43, at 94.
45. Briley, *Revolts*, *supra* note 36, at 1009-17.
46. *Id.*
47. Nora Sayre, *On the Battlefield,* NEWSTATESMAN (May 22, 2008), http://www.newstatesman.com/society/2008/05/chicago-police-vietnam-history (One reporter writes, "Then [a nice little old lady] and I were suddenly hurled against the wall when 100 policemen seized their blue wooden barricades to ram the crowd (mainly onlookers and press) against the building with such force that many next to me, including the old lady, were thrust through plate-glass windows. People sobbed with pain as their ribs snapped from being crushed against each other. Soon a line of stick-whipping cops swung in on us. Voiceless from gas, I feebly waved my credentials, and the warrior who was about to hit me said: 'Oops, press.' He let me limp into the hotel, where people were being pummeled into the red carpet, while free Pepsi was offered on the sidelines."); *see also* Jules Witcover, *From the Press and Chicago: the Truth Hurt*, 7 COLUMBIA JOURNALISM REV. 5 (1968).
48. Briley, *Revolts*, *supra* note 36, at 1022-23.
49. Ron Grossman, *For Five Days and Nights in August 1968, Chicago was a War Zone*, CHIC. TRIB. (Apr. 29, 2012), http://articles.chicagotribune.com/2012-04-29/site/ct-per-flash-1968convention-0429-20120501_1_democratic-national-convention-chicago-convention-war-zone (Walker was the director of the Chicago Crime Commission).
50. *Id.* (Walker "called the police response 'unrestrained and indiscriminate' and said it was often inflicted 'upon persons who had broken no law, disobeyed no order, made no threat.'").
51. *Id. See also* Heise, *supra* note 35 (recalling Daley issuance of an order to police "to 'shoot to kill' suspected arsonists and to 'shoot to maim' suspected looters in the rioting that followed King's assassination").
52. Briley, *Revolts*, *supra* note 36, at 1022-23.
53. *Id.*
54. Robert McClory, *Cop Watch*, CHIC. READER (July 16, 1992), http://www.chicagoreader.com/chicago/cop-watch/Content?oid=880075.
55. *The 1960s: Government and Politics: People in the News*, AMERICAN DECADES: 1960-1969 (Richard Layman, ed., 2001) (Black Panther Mark Clark, who was in the apartment with Hampton, was also killed.).
56. *See* McClory, *supra* note 53.
57. G. Flint Taylor, *'Nothing but a Northern Lynching': The Assassination of Fred Hampton*, HUFF. POST (Dec. 5, 2012), http://www.huffingtonpost.com/g-flint-taylor/fred-hamptom-death_b_2234651.html (State's Attorney Hanrahan filed murder charges against those in the apartment who survived).
58. *Id.*
59. *Id.*
60. *Id.* (Flint Taylor dubbed the judge part of the "Democratic machine.").
61. *Id.*

62. *Id.*
63. *Police Brutality Exposed*, CHIC. TRIB., Nov. 4, 1973, § 1, at 1, *available at* http://archives.chicagotribune.com/1973/11/04/page/1/article/masthead-1-no-title.
64. *Id.* (In one case, a man was beaten so severely by police officers who had issued him a parking ticket that he lost consciousness. When he awoke, he had a fractured jaw, broken nose, and two black eyes. Months later, the police department decided Johnson was not at fault, but the officer who beat him received only a two-day suspension nonetheless.).
65. Robert McClory, *Black Reformers Launch: Major Attack on Police Brutality*, CHIC. DAILY DEFENDER, Feb. 3, 1973, at 4.
66. *Id.*
67. Heise, *supra* note 35.
68. William Mullen & Emmett George, *Group Proposes New System: Dump IAD, Use Civilians, Cops Urged*, CHIC. TRIB., Nov. 17, 1973, § 1, at 1, *available at* http://archives.chicagotribune.com/1973/11/17/page/1/article/masthead-7-no-title/index.html.
69. *Exclusive Interview: IAD Failed to End Corruption: Rochford*, CHIC. TRIB., Feb. 13, 1974, § 1, at 1, *available at* http://archives.chicagotribune.com/1974/02/13/page/1/article/exclusive-interview.
70. Phillip Wattley, *Rochford Acts to Set Up New Office,* CHIC. TRIB., Mar. 25, 1974, § 1 at 9.
71. *Id. See also* Stephen Clarke, *Arrested Oversight: A Comparative Analysis and Case Study of How Civilian Oversight of the Police Should Function and How it Fails*, 43 COLUM. J.L. & SOC. PROBS. 1 (2009) (describing OPS as an example of a bottom-up civilian in-house oversight structure that is "inherently weak because it is premised on the flawed assumption that simply substituting civilians for sworn officers is enough to ensure strong oversight.").
72. John Conroy, *House of Screams*, CHIC. READER (Jan. 25, 1990), http://www.chicagoreader.com/chicago/house-of-screams/Content?oid=875107 (During his trial, Wilson described being tortured with electroshock by multiple Chicago Police officers, including Jon Burge).
73. Special Report from Gayle Shines, Chief Administrator of OPS, to LeRoy Martin, Superintendent of Police (Nov. 2, 1990), *available at* http://gangresearch.net/GangResearch/Chicago/goldston.pdf.
74. *Id.* at 000006.
75. *Id.* at 000006, 000024. *See also Report Charges Torture by Chicago Police*, AUSTIN AMERICAN STATESMAN (Feb. 8, 1992) (the report was given to officials in November of 1990, two years before its release).
76. G. Flint Taylor, *A Long and Winding Road: The Struggle for Justice in the Chicago Police Torture Cases*, PEOPLE'S LAW OFFICE, http://peopleslawoffice.com/wp-content/uploads/2012/06/A-long-and-winding-road-for-justice-in-chicago-police-torture-civil-rights-cases.pdf (last visited June 16, 2016) (Burge was suspended in 1991 and fired in 1993).
77. Gerald Grazier & Mary Powers, *Civilian Review Board Should Monitor Cops*, CHIC. SUN-TIMES (July 26, 2006).
78. John Conroy, *Town Without Pity*, CHIC. READER (Jan. 11, 1996), http://www.chicagoreader.com/chicago/town-without-pity/Content?oid=889464.
79. Fran Spielman, *Black Caucus Threatens to Withhold Votes from Next Top Cop*, CHIC. SUN-TIMES (Mar. 24, 2016), http://chicago.suntimes.com/politics/black-caucus-threatens-to-withold-votes-from-next-top-cop/.
80. Terry Wilson & Michael Ko, *Hillard Denies He Has Received OPS Report on Shooting*, CHIC. TRIB. (July 4, 1999), http://articles.chicagotribune.com/1999-07-04/news/9907040272_1_officers-actions-terry-hillard-police-spokesman-pat-camden.
81. Melvin Caldwell, *Chicago Police Board Must Look Out for Citizens*, CHIC. DEFENDER (Sep. 23, 2004). (Russ's family eventually received a $9.6 million settlement).
82. Jamie Kalven,*'97 Blueprint for Reining in Rogue Cops Gathering Dust Today*, CHIC. SUN-TIMES (Jan. 1, 2007).
83. Kim Janssen, *Chicago: Firefighter Says Cops Tortured Him in Home*, DAILY SOUTHTOWN (Nov. 2, 2006).

84. *Jerome Finnigan*, CITIZENS POLICE DATA PROJECT, http://cpdb.co/officer/jerome-finnigan/2235 (last visited on Sept. 2, 2016).
85. *Id.*
86. Carol Marin & Don Moseley, *Jailed Former Cop Speaks Out About Murder Scandal*, NBC CHICAGO (Mar. 20, 2012), http://www.nbcchicago.com/news/local/Jailed-Former-Cop-Murder-Scandal-143488126.html.
87. *Id.*
88. *Jerome Finnigan*, *supra* note 84. *See also* Marin & Moseley, *supra* note 86.
89. Don Babwin, *Ex-Chicago Cop Gets 12 Years in Corruption Case*, HUFF. POST (Sept. 8, 2011), http://www.huffingtonpost.com/huff-wires/20110908/us-chicago-police-corruption/.
90. Fran Spielman, *2003 Shooting | Was Watching CTA Fight When Killed*, CHIC. SUN-TIMES (Mar. 4, 2011); John Conroy, *Killed on Camera*, CHIC. READER (Apr. 19, 2007).
91. *Family of Michael Pleasance Gets $3 Million Settlement: Unarmed Man Shot by Chicago Cop*, HUFF. POST (Mar. 4, 2011), http://www.huffingtonpost.com/2011/03/04/family-of-michael-pleasan_n_831308.html (the City settled with Pleasance's family for $3 million but claimed no-fault).
92. *See, e.g.*, Susan Saulny, *Top Chicago Police Official Resigns Amid Furor*, N.Y. TIMES (Apr. 3, 2007), http://www.nytimes.com/2007/04/03/us/03chicago.html?_r=0.
93. Randi Kaye & Ismael Estrada, *Chicago's Finest Under Fire for Brutality*, CNN (Sept. 28, 2007), http://www.cnn.com/2007/US/law/09/27/police.complaints/index.html?iref=topnews (Petrovic's lawyer stated that Chevas had never been disciplined for the more than 50 complaints filed against him).
94. *Id.* (Charges were eventually dropped against Petrovic.).
95. *Id*. (OPS sent Petrovic a letter informing her that after a thorough investigation, they had determined her complaint was unfounded. Chevas eventually resigned after being caught on video fraudulently using credit cards that he had confiscated from people.).
96. Lisa Donovan, *$261K Award for Cop Beating—Attack Followed Assault Report: Teacher*, CHIC. SUN-TIMES (Mar. 5, 2009); Kaye & Estrada, *supra* note 93.
97. *Id*.
98. Jeff Coen, *2 Cops Held Liable in Screwdriver Assault*, CHIC. TRIB. (Oct. 17, 2007), http://articles.chicagotribune.com/2007-10-17/news/0710160641_1_tactical-officers-police-department-verdict.
99. *Id.*
100. Abdon Pallasch & Frank Main, *Man Wins $4 Mil. in Case vs. Cops—Says Officers Assaulted Him with a Screwdriver, Claimed He Had Drugs*, CHIC. SUN-TIMES (Oct. 17, 2007); *see also* Coen, *supra* note 102 (Coffie received a $4 million damages award as a result of the verdict).
101. *See generally*, *Alleged Torture by Chicago Police Draws Call for International Investigation*, U.S. NEWSWIRE (Aug. 29, 2005).
102. Annie Sweeney, *Beaten Bartender's Suit Will Feature Off-Duty Cop's Beating Video at Upcoming Trial*, CHIC. TRIB. (Oct. 22, 2012), http://articles.chicagotribune.com/2012-10-22/news/ct-met-abbate-bar-beating-trial-20121022_1_karolina-obrycka-officer-anthony-abbate-chicago-police (Surveillance video showed that Abbate's tantrum had begun even before he assaulted Obrycka. He had punched one patron, thrown another on the floor, and one point flexed his muscles and shouted "Chicago Police Department!"). Only a few months after the Obrycka incident, there was another bar battery. This time, it was of four men—Barry and Aaron Gildand, Scott Lowrance, and Adam Mastrucci—at Jefferson Tap. David Heinzmann, *4 Victims Sue Cops in 2nd Taped Beating*, CHIC. TRIB. (May 9, 2007), http://articles.chicagotribune.com/2007-05-09/news/0705090175_1_off-duty-officers-badges.
103. When asked by attorneys at trial why he did not include the details in the incident report, Masheimer gave the strange excuse that he left the information out because it was all "speculation and assumption." Apparently the officer did not feel that looking at the video footage before dismissing it as speculation was a better idea than withholding evidentiary

information. *Anthony Abbate Trial: Ex-Cop Denies Coverup, Says He Got Blackout Drunk After Learning Dog Had Cancer*, HUFF. POST (Oct. 24, 2012), http://www.huffingtonpost.com/2012/10/24/anthony-abbate-trial-ex-cop_n_2010632.html.

104. Frank Main, *Bartender Beaten in 2007 Told Officers that Her Attacker was a Cop and That Incident was on Tape—but They Left Those Details Out of Their Report*, CHIC. SUN-TIMES, Feb. 2, 2012, at 2; *see also Obrycka v. City of Chicago*, 913 F. Supp. 2d 598 (N.D. Ill. 2012) (Obrycka's claim that the she told the officers about the videotape was confirmed at trial when the videotape was shown to the jury.)
105. Annie Sweeney, *Bartender Testified: Cop Tossed Me 'Like a Rag Doll'*, CHIC. TRIB. (Oct. 30, 2012), http://articles.chicagotribune.com/2012-10-30/news/ct-met-abbate-bar-beating-trial-1030-20121030_1_anthony-abbate-karolina-obrycka-panic-attacks.
106. Frank Main, *supra* note 104, at 2.
107. *Cop Guilty of Aggravated Battery in Bar Beating*, NBC CHICAGO, http://www.nbcchicago.com/news/local/Abbate-Guilty-on-1-Count-of-Battery.html (last visited on Oct. 10, 2016); *Abbate's Sentencing: The Case for Expanding Access to Public Records*, CHICAGO JUSTICE PROJECT, http://chicagojustice.org/blog/abbates-sentencing-the-case-for-expanding-access.
108. The jury at Abbate's trial found that "Abbate was part of the conspiracy to cover up the beating and that the Police Department had a widespread code of silence that emboldened Abbate to beat up Obrycka." Annie Sweeney & Jason Meisner, *Jury Finds in Favor of Bartender in Cop Bar Beating Case, 'Justice was Served,'* CHIC. TRIB. (Nov. 14, 2012), http://articles.chicagotribune.com/2012-11-14/news/chi-verdict-reached-in-cop-bar-beating-case-20121113_1_code-of-silence-policy-karolina-obrycka-chicago-cop-anthony-abbate.
109. Relatedly, in Obrycka's 2012 civil case, the central issue presented at trial was whether the Chicago Police Department operated under a code of silence and whether there was "a widespread custom or practice that the City does not adequately investigate and/or discipline its officers." Associated Press, *Female Bartender Brutally Beaten By Drunken Off-duty Chicago Cop Awarded $850,000*, N.Y. DAILY NEWS (Nov. 14, 2012), http://www.nydailynews.com/news/national/female-bartender-beaten-awarded-850k-article-1.1201757; Obrycka v. City of Chicago, 913 F. Supp. 2d 598 (N.D. Ill. 2012). Obrycka was awarded $850,000 in compensatory damages, which would be paid by the taxpayers. *See* Sweeney & Meisner, *supra* note 108.
110. Jamie Kalven, Editorial, *'97 Blueprint for Reining in Rogue Cops Gathering Dust Today,* CHIC. SUN-TIMES, Jan. 1, 2007, at 23.
111. Jeffrey Flicker, *The Independent Police Review Authority as Successor to the OPS: Thorough, Timely Investigations with Fair Results Transparent to the Public are Works in Progress*, 24 CBA Record 56 (2010).
112. "*Coercion* means the use of express or implied threats of violence that puts a person in immediate fear of the consequences in order to compel that person to act against his or her will." CHICAGO, ILL., MUNICIPAL CODE OF CHICAGO ORDINANCE, ch. 2-57-010(b) (1990).
113. *See* INDEPENDENT POLICE REVIEW AUTHORITY, http://www.iprachicago.org (last visited Feb. 18, 2015); "Verbal abuse means the use of a remark which is overtly insulting, mocking or belittling directed at a person based upon the actual or perceived race, color, sex, religion, national origin, sexual orientation, or gender identity of that person." CHICAGO, ILL., MUNICIPAL CODE OF CHICAGO ORDINANCE, ch. 2-57-010(f) (1990).
114. INDEPENDENT POLICE REVIEW AUTHORITY, http://www.iprachicago.org (last visited Feb. 18, 2015).
115. *Id.*
116. CHICAGO, ILL., MUNICIPAL CODE OF CHICAGO ORDINANCE, chs. 2-57-100 to 2-57-110 (1990).
117. *Id.*
118. The Goldblatt building, located at 1615 W. Chicago Avenue, is owned by the City of Chicago. *Quarterly Report October 1, 2011–December 31, 2011*, January 17, 2012. INDEPENDENT POLICE REVIEW AUTHORITY, http://www.iprachicago.org/wp-content/uploads/2016/08/2012-01-15QuarterlyReport-1.pdf (last visited Feb. 18, 2015).

119. Emails released by the Emanuel administration suggest that his top staffers were well aware of the McDonald shooting, that it was likely to be a big issue for the Mayor, and that they had met with Emanuel numerous times prior to the video's release, which makes it likely that he was also aware of what was in the video. Jeff Coen & John Chase, *Top Emanuel Aides Aware of Key Laquan McDonald Details Months Before Mayor Says He Knew*, CHIC. TRIB. (Jan. 14, 2016), http://www.chicagotribune.com/news/local/politics/ct-rahm-emanuel-laquan-mcdonald-shooting-met-20160113-story.html.
120. Lorenzo Davis, former IPRA Investigator, Comments at the Police Accountability Coalition Meeting (Mar. 9, 2016).
121. Gordon Waldron & David Melton, *A Good First Step: A Policy Statement from the Chicago Counsel of Lawyers,* CHICAGO CITY COUNCIL, http://www.chicagocouncil.org/wp-content/uploads/A-Good-First-Step-final-8.pdf (last visited June 16, 2016).
122. Monica Davey & Timothy Williams, *Chicago Pays, While Few Officers Do, in Killings*, N.Y. TIMES, Dec. 18, 2015, at A1.
123. *See* Waldron & Melton, *supra* note 130.
124. *See Annual Report 2008-2009*, INDEPENDENT POLICE REVIEW AUTHORITY, http://www.iprachicago.org/annual-report-2008-2009/ (last visited Feb. 18, 2015). IPRA's five-step complaint process: (1) Intake: after assigning the complaint a Log Number, IPRA retains those within its jurisdiction and forwards the rest to the CPD's Internal Affairs Division. (2) Interview: for the complaints it retains, IPRA interview the complainant in detail. (2a) Sworn Affidavit Requirement: police officers may not be interviewed about the conduct in the complaint unless the complainant has signed a sworn affidavit. (3) Investigation: an IPRA investigator tries to obtain statements from witnesses and to gather physical evidence. If necessary, it can request DNA or fingerprint analysis. (4) Conclusion: the investigator creates a final report about his/her findings and the investigative file is forwarded to CPD for review. IPRA's findings will fall into one of the following categories: (4a) Sustained: there is sufficient evidence to justify a disciplinary action. (4b) Not Sustained: there is not enough evidence to either prove or disprove the allegations. (4c) Unfounded: "the allegation is false or not factual"(4d) Exonerated: the accused's action was lawful and proper. (4e) No Affidavit: no witness to the misconduct provided a sworn statement and no exception to the affidavit requirement was warranted. (5) Review: if the Police Superintendent does not agree with IPRA's disciplinary recommendations, he must submit his disagreement in writing. If he approves, the officer can challenge the decision in an appeal.
125. INDEPENDENT POLICE REVIEW AUTHORITY, http://www.iprachicago.org (last visited Feb. 18, 2015).
126. CHICAGO, ILL., MUNICIPAL CODE OF CHICAGO ORDINANCE, ch. 2-57-050 (1990).
127. The investigation should be concluded within six months. CHICAGO, ILL., MUNICIPAL CODE OF CHICAGO ORDINANCE, ch. 2-57-070 (1990).
128. IPRA is supposed to conclude its investigations within six months. If the investigation cannot be completed within six months, IPRA is supposed to notify the mayor's office, city council committee on public safety, the complainant, and the employee listed in the complaint detailing why the investigation is still ongoing. CHICAGO, ILL., MUNICIPAL CODE OF CHICAGO ORDINANCE, ch. 2-57-060 (1990).
129. CHICAGO, ILL., MUNICIPAL CODE OF CHICAGO ORDINANCE, ch. 2-57-060 (1990).
130. *See Chicago Police Board*, CITY OF CHICAGO, http://www.cityofchicago.org/city/en/depts/cpb.html (last visited Feb. 18, 2015) (The Police Board, which consists of nine people appointed by the Mayor, claims to be an "independent civilian body that oversees certain activities of the Chicago Police Department.").
131. For example, between March 2014 and March 2015, Superintendent McCarthy's request that twenty-five officers be fired was grossly unsuccessful when his requests went before the police board, which decided to only fire seven officers. Fran Spielman, *Emanuel Continues Shakeup of Chicago Police Board*, CHIC. SUN TIMES (Jul. 5, 2015), http://chicago.suntimes.com/politics/emanuel-continues-shakeup-of-chicago-police-board/.
132. CITY OF CHICAGO, http://www.cityofchicago.org/city/en/depts/cpb.html (last visited Feb. 18, 2015) (additionally, it "holds monthly public meetings, nominates candidates for the

police superintendent position that are then presented to the mayor, and adopts the 'Rules and Regulations' for the governance of the police department"); CHICAGO, ILL., MUNICIPAL CODE OF CHICAGO ORDINANCE, ch. 2-57-060 (c) (1990).

133. CHICAGO, ILL., MUNICIPAL CODE OF CHICAGO ORDINANCE, ch. 2-84-030 (1990).

134. See Uniform Peace Officers' Disciplinary Act, 50 ILCS 725/3.8(b): "Anyone filing a complaint against a sworn peace officer must have the complaint supported by a sworn affidavit. Any complaint, having been supported by a sworn affidavit, and having been found, in total or in part, to contain knowingly false material information, shall be presented to the appropriate State's Attorney for a determination of prosecution."

135. 6,230 total complaints from 2008 to 2015 out of 19,957 total closed cases.

136. *See Annual Report 2008-2009*, *supra* note 133 ("In August, the Independent Police Review Authority … started examining a 'handful' of citizen complaints investigators believed were false." Additionally, IPRA staff are expected to be on alert and to notify the Legal Unit if they come across a file that indicates the affiant was not completely truthful. Frank Main, *City Going After False Complaints About Cops*, CHIC. SUN-TIMES (Oct. 30, 2009)).

137. *See* Davis, *supra* note 129 (Davis stated that "gangbangers, drug dealers don't file complaints … as a rule." In addition, he stated, even if they do file complaints, the fact that they're engaged in criminal activities does not make their complaints illegitimate.).

138. CHICAGO, ILL., MUNICIPAL CODE OF CHICAGO ORDINANCE, § 1-22-010, et seq. (1990).

139. Those found guilty could also be liable for up to three times the amount of any damages the City sustained due to the complaint.

140. Scott M. Ando, *2015 Budget Statement to the City Council Committee on Budget and Government Operations*, INDEPENDENT POLICE REVIEW AUTHORITY (Oct. 29, 2014), https://www.cityofchicago.org/content/dam/city/depts/obm/supp_info/2015Budget/Budget_Hearing_Statements_MBE_WBE_Org/056_Statement_MBE_WBE_Org_2015.pdf.

141. Starting with the fourth quarter of 2009 and through the third quarter of 2010, IPRA took in 9,643 complaints. It referred 6,576 to IAD. It closed 2,882, of which only forty-nine were sustained. During the 4th quarter of 2010 through the 3rd quarter of 2011, IPRA accepted 8,656 complaints. Of the 2,888 investigations that IPRA closed, it sustained only 65. From the fourth quarter of 2011 through the third quarter of 2012, IPRA accepted 8,452 complaints. Of the 2,688 that it closed, it sustained 105. From January 1, 2012 through December 31, 2012, IPRA closed a total of 2853 cases and, of those, sustained 111. From January 1, 2013 through December 31, 2013, IPRA closed a total of 2,501 cases and, of those, sustained 113. From January 1, 2014 through December 31, 2014, IPRA closed a total of 2,250 cases and, of those, sustained 126. *See Quarterly Reports,* INDEPENDENT POLICE REVIEW AUTHORITY, http://www.iprachicago.org/category/quarterly-reports/ (last visited Feb. 18, 2015).

142. "A Log Number is considered closed when IPRA completes its work on the matter, regardless of whether the Police Department is still processing the results." *Quarterly Report, October 1, 2008—December 31, 2008, January 15, 2009*, INDEPENDENT POLICE REVIEW AUTHORITY, http://www.iprachicago.org/4th-quarter-report-2008/http://www.iprachicago.org/wp-content/uploads/2016/08/2009-01-15QuarterlyReport.pdf (last visited Feb. 18, 2015).

143. *Id*.; *Annual Report 2008-2009*, *supra* note 133.

144. *Annual Report 2008-2009*, *supra* note 133.

145. A Huffington Post analysis of data released by the Invisible Institute found that the sustained rate was even lower when the complainant was black. Between 2011 and 2015, 1.6% of complaints filled by black people were sustained. Shane Shifflett, Alissa Scheller, et al., *Police Abuse Complaints by Black Chicagoans Dismissed Nearly 99 Percent Of the Time*, THE HUFFINGTON POST (Dec. 7, 2015), http://data.huffingtonpost.com/2015/12/chicago-officer-misconduct-allegations.

146. Sarah Macaraeg, *How the "Gold Standard" of Police Accountability Fails Civilians by Design*, TRUTHOUT (Apr. 19, 2015), http://www.truth-out.org/news/item/30285-how-the-gold-standard-of-police-accountability-fails-civilians-by-design.

147. *Who Watches the Watchmen? Police Oversight in Chicago*, Community Renewal Society (Feb. 2016), https://www.communityrenewalsociety.org/sites/default/files/Who_Watches_the_Watchmen_Full_Report.pdf.
148. Andrew Schroedter, *Police Misconduct Bill: $500M*, Daily Southtown, Apr. 6, 2014, at 41.
149. $26 million in 2005; $29.4 million in 2006; $40.6 million in 2007; $89.7 million in 2008; $47.5 million in 2009; $61.4 million in 2010; $54.7 million in 2011; $58.7 million in 2012; $96.1 million in 2013; $65.5 million in 2014; and $40.5 million. Andrew Schroedter , *Chicago Police Misconduct—A Rising Financial Toll*, BGA (Jan. 31, 2016), http://www.bettergov.org/news/chicago-police-misconduct-—-a-rising-financial-toll.
150. Frank Main & Annie Sweeney, *Mistakes Cost City, Not Cops—Few Officers Face Firing or Serious Discipline*, Chic. Sun-Times, Nov. 18, 2007, at A10.
151. *Id.*
152. Tom Schuba, *City Council Authorizes $6.5 Million in Police Misconduct Settlements*, NBC Chicago (Apr. 13, 2016), http://www.nbcchicago.com/blogs/ward-room/City-Council-Authorizes-65-Million-in-Police-Misconduct-Settlements-375588701.html ($4.95 million is for the family of Philip Coleman, a University of Chicago graduate with no criminal history, who was tasered and assaulted after being arrested while having a mental breakdown, for which his father begged police to bring Coleman to a hospital. The rest of the settlement money is going to the family of Justin Cook, an asthmatic who died after police refused to help him with his inhaler after a footchase; officers allegedly used the inhaler to spray into the air instead.).
153. *Keith Herrera*, Citizens Police Data Project, https://cpdb.co/officer/keith-herrera/3160 (last visited on Feb. 18, 2015).
154. *See* Schuba*, supra* note 163.
155. *Lou Toth*, Citizens Police Data Project, https://cpdb.co/data/D65BNA/citizens-police-data-project (last visited on May 10, 2016).
156. Main & Sweeney, *supra* note 150.
157. *David Rodriguez*, Citizens Police Data Project, https://cpdb.co/officer/david-rodriguez/9465 (last visited on May 10, 2016).
158. *Police Salary*, City of Chicago, https://data.cityofchicago.org/Administration-Finance/Police-Salary/ap92-235q (last visited on May 10, 2016).
159. Jamie Loo, *City Resolves Cop Shooting Case For $4.5M*, Chic. Daily Law Bulletin (Feb. 6, 2014), *available at* http://rblaw.net/personalinjurylawyers/wp-content/uploads/2015/11/RB-Law-PDF.pdf.
160. *Id.*
161. *Id.*
162. *Id.*
163. *Id.*
164. *See Police Salary*, *supra* note 171 (They each earn $80,778 per year.).
165. Stacy St. Clair & Jeremy Gorner, *City Plans $4.1 Million Settlement in Fatal Police Shooting*, Chic. Trib. (Feb. 8, 2013), http://articles.chicagotribune.com/2013-02-08/news/chi-city-plans-settlement-in-fatal-police-shooting-20130208_1_three-shootings-flint-farmer-officer-gildardo-sierra/2 [hereinafter St. Clair & Gorner, *$4.1 Million Settlement*].
166. *Id.*
167. *Id.*
168. Stacy St. Clair & Steve Mills, *No Charges Against Cop Who Shot Unarmed Man*, Chic. Trib. (Nov. 6, 2013), http://articles.chicagotribune.com/2013-11-06/news/ct-met-chicago-cop-fatal-shooting-1106-20131106_1_officer-gildardo-sierra-flint-farmer-previous-shootings.
169. Jeremy Gorner, Steve Mills, & Stacy St. Clair, *Chicago Cop Under Scrutiny For 3 Shootings, 2 Of Them Fatal*, Chic. Trib. (Oct. 22, 2011), http://www.chicagotribune.com/ct-met-police-involved-shootings-1023-20111022-story.html.

170. *Id.*
171. *Police Salary*, *supra* note 171 (Sierra earns $83,616 per year.).
172. St. Clair & Gorner, *$4.1 Million Settlement*, *supra* note 178.
173. Ed Krayewski, *Chicago Cop Cleared in Shooting of Unarmed Man, His Third Shooting in Six Months, City Already Settled with Family for $4 Million*, REASON.COM (Nov. 8, 2013), http://reason.com/blog/2013/11/08/hicago-cop-cleared-in-shooting-of-unarm.
174. *Kevin Fry*, CITIZENS POLICE DATA PROJECT, https://cpdb.co/data/D1ordb/citizens-police-data-project (last visited May 10, 2016) (Ten of the complaints filed against Fry were for use of force. Complaint data from 2003, when Fry joined the police department, until 2010 was withheld.).
175. *Lou Toth*, CITIZENS POLICE DATA PROJECT, https://cpdb.co/data/D65BNA/citizens-police-data-project (last visited May 10, 2016) (It is possible that Toth's complaints exceed thirteen, but data for the period of 2000-2010 was withheld. Four of the complaints were for use of excessive force.).
176. *Police Salary*, *supra* note 171 (He is earning $83,616 per year.).
177. Jason Meisner, *Judge Negates Jury's $3.5 Million Verdict in Chicago Police Shooting,* CHIC. TRIB. (Dec. 14, 2015), http://www.chicagotribune.com/news/ct-fatal-chicago-police-shooting-trial-met-20151213-story.html (The jurors had asked the judge to clarify whether their answer would impact the verdict's outcome, but the judge didn't provide an answer. Lawyers asked the judge to reconsider her decision, and two jurors submitted affidavits saying that they did not believe Proano should have used deadly force.).
178. *Id.* (The complaints included excessive force allegations; as of 2015).
179. *Id.* (IPRA is supposed to clear cases within a six month period.).
180. This code of silence has been seen repeatedly in some of Chicago's biggest scandals. Burge, Abbate, and Van Dyke were all protected by fellow officers. Van Dyke, for example, killed McDonald in front of multiple other officers, none of which—except for an anonymous whistleblower—reported what truly happened. Instead, everyone signed off on the official version of the story, which was disproven when the dash cam video was released.
181. Rob Arthur, *How to Predict Bad Cops in Chicago,* FIVETHIRTYEIGHT (Dec. 15, 2015), http://fivethirtyeight.com/features/how-to-predict-which-chicago-cops-will-commit-misconduct/ (Van Dyke, the officer who killed Laquan McDonald, had twenty complaints against him, which included many for excessive force.).
182. *About the Lodge*, FRATERNAL ORDER OF POLICE CHICAGO LODGE 7, http://www.chicagofop.org/about-the-lodge/ (last visited on Feb. 29, 2016).
183. Yana Kunichoff, *How Chicago's 'Fraternal Order of Propaganda' Shapes the Story of Fatal Police Shootings*, CHIC. READER (Feb. 3, 2016), http://www.chicagoreader.com/hicago/fraternal-order-of-police-shootings-propaganda-pat-camden/Content?oid=21092544.
184. *2 Dead, At Least 15 Wounded in Weekend Violence*, CBS CHICAGO (Dec. 15, 2012), http://chicago.cbslocal.com/2012/12/15/10-wounded-in-shootings-since-Friday-afternoon/; Bridget Doyle, Deanese Williams-Harris, & Liam Ford, *Crowd Reacts After Robbery Suspect Shot to Death by Police on South Side*, CHIC. TRIB. (Dec. 15, 2012), http://articles.chicagotribune.com/2012-12-15/news/chi-1-dead-in-policeinvolved-shooting-on-southside-20121215_1_police-officers-mccarthy-police-car.
185. *Id.*
186. *Kymberly Reynolds*, CITIZENS POLICE DATA PROJECT, https://cpdb.co/investigator/kymberly-reynolds/496 (last visited May 10, 2016) (Kymberly Reynolds has sustained one "use of force" allegation for a 2011 case involving an off-duty officer. A 45-day suspension was recommended.).
187. *See 2 Dead*, *supra* note 184.
188. The video footage showed four people jumping out of the car after hitting a lamppost and running away. Moore was hit by a police SUV. When a police officer lost his balance, Moore again tried to run away, but was shot. According to autopsy reports, Moore was shot in the back and the side of his pelvis. Kunichoff, *supra* note 183.

189. Kunichoff, *supra* note 183.

190. *Id.*

191. *Id* (quoting Camden, "He's got a 100-yard stare. He's staring blankly. [He] walked up to a car and stabbed the tire of the car and kept walking." He went on to add that McDonald lunged at police and was then shot in the chest.).

192. Editorial Board, *Editorial: A Staggering Moment for Chicago*, CHIC. TRIB. (Nov. 24, 2015), http://www.chicagotribune.com/news/ct-laquan-video-edit-1125-20151124-story.html. In an email, Jeffrey Neslund, the McDonald family lawyer criticized the FOP's practice of releasing this information. He said that there must be "accountability for the City and the Department's role in allowing false information to be disseminated to the media via the FOP in an attempt to win public approval and falsely characterize the fatal shooting as 'justified.'" Kunichoff, *supra* note 183.

193. Mark Berman, *Why Did Authorities Say Laquan McDonald Lunged At Chicago Police Officers?*, WASH. POST (Nov. 25, 2015), https://www.washingtonpost.com/news/post-nation/wp/2015/11/25/why-did-authorities-say-laquan-mcdonald-lunged-at-chicago-police-officers/ (quoting Camden, "I never talked to the officer, period. It was told to me after it was told to somebody else who was told by another person, and this was two hours after the incident … hearsay is basically what I'm putting out at that point.").

194. Kunichoff, *supra* note 199.

195. *Id.*

196. *Id.* ("He's standing up there representing an official body; the public is listening to him represent the police organization, even though it's the union. The police department and the city administration should be objecting to that; if they're not, then they're complicit.").

197. Since McDonald's shooting, FOP president Angelo has said that Camden's comments on the shooting were concerning and shouldn't have been given. We will have to wait to see if this puts an end to such media influence by the FOP in the future. Kunichoff, *supra* note 183.

198. 198. Kunichoff, *supra* note 183.

199. *Accountability*, THE CHICAGO REPORT (May 18, 2015), http://chicagoreporter.com/police-have-their-own-bill-of-rights-raising-questions-about-accountability/.

200. Police officers are additionally protected by a city ordinance called the "Uniform Peace Officers' Disciplinary Act," which provides many of the same protects as those outlined in the CBA. CHICAGO, ILL., 50 ILCS 725 (2015), *available at* http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=736&ChapterID=11. According to Samuel Walker, a scholar and consultant on policing practices, the bill of rights law became important to police officers after the civil rights movement became forceful about holding police accountable. "[Police officers] opposed almost every measure to improve police accountability. They still do," he said. Emmanuel, *supra* note 199.

201. Many of the provisions overlap.

202. Agreement Between Fraternal Order of Police Chicago Lodge No. 7 and the City of Chicago, art. 6, § 6.1(C), July 1, 2012, Fraternal Order of Police, *available at* http://static1.squarespace.com/static/5516f090e4b01b711314608f/t/55d0b066e4b0c6285c50236b/1439740006221/Chicago-FOP-Contract.pdf [hereinafter Chicago Agreement], provides:

> Prior to an interrogation, the Officer under investigation shall be informed of the identities of: the person in charge of the investigation, the designated primary interrogation officer, the designated secondary interrogation officer, if any, and all persons present during the interrogation and shall be advised whether the interrogation will be audio recorded.

203. *Id.* Specifically, the contract states, "The secondary interrogator will not ask any questions until the primary interrogator has finished asking questions and invites the secondary interrogator to ask questions. Generally, the secondary interrogator will ask follow-up questions for clarification purposes. The primary interrogator will not ask any questions until the secondary interrogator has finished asking questions and invites the primary interrogator to ask follow-up questions."

204. *Id.* "Unless both parties agree, no more than two members of IPRA or IAD will be present in the interview room during questioning."

205. According to a *Reader* journalist, Ruth Castelli, the woman who shot Jamaal Moore, showed up with a team of lawyers and union reps that outnumbered investigators at her IPRA interview about the shooting. In addition, she started off her interview by stating that the statement she was giving was done under duress and fear of losing her job if she refused to speak. She was interviewed by IPRA investigator Kymberly Reynolds, who was an LAPD officer in the late '80s and early '90s. Kunichoff, *supra* note 183.

206. Chicago Agreement, *supra* note 202, at § 6.1(E) provides: "Immediately prior to the interrogation of an Officer under investigation, he or she shall be informed in writing of the nature of the complaint and the names of all complainants."

207. Chicago Agreement, *supra* note 202, at art. 6, § 6.1(L).

208. Chicago Agreement, *supra* note 202, at art. 6, § 6.1(M):

. An Officer who is not allowed to review the video or audio evidence prior to giving a statement shall not be charged with a Rule 14 violation unless the Officer has been presented with the video or audio evidence and given the opportunity to clarify and amend the Officer's original statement. … In any event, the Employer shall not charge an Officer with a Rule 14 violation unless it has determined that: (1) the Officer willfully made a false statement; and (2) the false statement was made about a fact that was material to the incident under investigation."

A Rule 14 violation prohibits "[m]aking a false report, written or oral." RULES AND REGULATIONS OF THE CHIC. POLICE DEPT. (Apr. 2015), ***available at*** http://directives.chicagopolice.org/lt2015/data/a7a57bf0-12d7c186-a4912-d7c1-8b12822c2ca106c4.html.

209. Id. Section 6.1(M) provides, in part, "An Officer who is not allowed to review the video or audio evidence prior to giving a statement shall not be charged with a Rule 14 violation unless the Officer has been presented with the video or audio evidence and given the opportunity to clarify and amend the Officer's original statement."

210. Frank Main, *Cops Now Get Cooling-Off Period After On-The-Job Shootings*, CHIC. SUN-TIMES, June 29, 2011, at 10.

211. Chicago Agreement, *supra* note 202, at art. 6, § 6.1(A).

212. Alexis Artwhol, *Perceptual and Memory Distortion During Officer-Involved Shootings,* FBI Law Enforcement Bulletin (Oct. 2002), http://www.au.af.mil/au/awc/awcgate/fbi/percep_distort.pdf.

213. *'Code of Silence' Trial: Beaten Bartender Testifies Cops Tired to Bribe Her,* HUFF. POST (Oct. 30, 2012), http://www.huffingtonpost.com/2012/10/30/code-of-silence-trial-bea_n_2043959.html (during Abbate's civil trial, which resulted in a favorable jury verdict for the victim, Obrycka testified that officers tried to bribe her into keeping the incident secret.); Monica Davey, *Officers' Statements Differ from Video in Death of Laquan McDonald,* N.Y. TIMES (Dec. 5, 2015), http://www.nytimes.com/2015/12/06/us/officers-statements-differ-from-video-in-death-of-laquan-mcdonald.html (at least five officers who witnessed Van Dyke shooting McDonald corroborated the shooter's story, which was later disproved by the dash-cam video).

214. Chicago Agreement, *supra* note 202, at art. 6, § 6.1(F).

215. Chicago Agreement, *supra* note 202, at art. 9, § 9.8 (Expense of the Arbitrator).

216. Adeshina Emmanuel, *Chicago Police Contract Scrutinized in the Aftermath of Laquan McDonald's Death*, CHIC. REPORTER (Dec. 10, 2015), http://chicagoreporter.com/chicago-police-contract-scrutinized-in-the-aftermath-of-laquan-mcdonalds-death/.

217. Chicago Agreement, *supra* note 202, at art. 8, § 8.4 (Use and Destruction of File Material - "All disciplinary investigation files, disciplinary history card entries, IPRA and IAD disciplinary records, and any other disciplinary record or summary of such record other than records related to Police Board cases, will be destroyed five (5) years after the date of the incident or the date upon which the violation is discovered, whichever is longer, except that not sustained files alleging criminal conduct or excessive force shall be retained for a period of seven (7) years after the date of the incident or the date upon which the violation

is discovered, whichever is long, and thereafter, cannot be used against the officer in any future proceedings in any other forum, except as specified below, unless the investigation relates to a matter which has been subject to either civil or criminal court litigation or arbitration prior to the expiration of the five-(5)-year period. . . . Reprimands and suspensions of one (1) to five (5) days will stay on the Officer's disciplinary history for a period of three (3) years from the last date of suspension or date of reprimand, or five (5) years from the date of the incident, whichever is earlier.").

218. *Id*.
219. *Id*.
220. *Id*.
221. Austin Berg, *Chicago Police Unions are Fighting to Destroy Decades of Complaint Records,* Illinois Policy (Dec. 14, 2015), https://www.illinoispolicy.org/chicago-police-unions-are-fighting-to-destroy-decades-of-complaint-records/.
222. Ken Hare, *FOP Contract Arbitrator Says "Destroy All Records"*, Chic. Defender (Jan. 20, 2016), http://chicagodefender.com/2016/01/20/fop-contract-arbitrator-says-destroy-all-records/.
223. Phil Rogers, *U.S. Attorney General Loretta Lynch Announces Probe Into Chicago Police Department*, NBC Chicago (Dec. 7, 2015), http://www.nbcchicago.com/news/national-international/Loretta-Lynch-Expected-to-Announce-Details-of-Justice-Departments-CPD-Investigation-360789401.html.
224. Main & Sweeney, *supra* note 150.
225. Davey & Williams, *supra* note 122.
226. Chicago Agreement, *supra* note 202.
227. Adeshina Emmanuel, *After Laquan McDonald's Shooting, Chicago Targets Police Contract Protections*, Mother Jones (Dec. 11, 2015), http://www.motherjones.com/politics/2015/12/laquan-mcdonald-police-shooting-chicago-contract-scrutiny ("If you kept getting your company sued and cost them millions of dollars, you would be out of there," said Alderman Brookins.).
228. *Id*.
229. Lorraine Swanson, *Chicago Police Announce Results of Recruitment Campaign, Test Venue*, Patch (Feb. 22, 2016), http://patch.com/illinois/beverly-mtgreenwood/chicago-police-announce-results-recruitment-campaign-test-venue-0.
230. *Id*.
231. *Id*.
232. *Recommendations for Reform: Restoring Trust Between the Chicago Police and the Communities They Serve*, Police Accountability Task Force (Apr. 2016), http://chicagotonight.wttw.com/sites/default/files/article/file-attachments/PATF_Final_Report_4_13_16.pdf.
233. *File a Complaint About the Seattle Police*, Seattle.gov, http://www.seattle.gov/opa/file-a-complaint-about-the-seattle-police (last visited on Oct. 13, 2016). See also *OPA Complaint Process*, Seattle.gov, http://www.seattle.gov/opa/complaint-process (last visited on Oct. 13, 2016).
234. *Anonymous Complaint Form*, Seattle.gov, http://www.seattle.gov/opa/file-a-complaint-about-the-seattle-police/anonymous-complaint-form (last visited Oct. 13, 2016).
235. Chicago Agreement, *supra* note 202, at art. 6, § 6.1(D) provides in part, "No anonymous complaint made against an Officer shall be made the subject of a Complaint Register investigation unless the allegation is a violation of the Illinois Criminal Code, the criminal code of another state of the United States or a criminal violation of a federal statute."
236. Alexa Van Brunt, et al., *Complaint Submitted to the United States Department of Justice Documenting the Role of the Independent Police Review Authority in Perpetuating a Code of Silence and Culture of Violence in the Chicago Police Department,* at 29, *available at* https://chicagopatf.org/wp-content/uploads/2016/02/Complaint-to-US-Dept-of-Justice.pdf.

237. Angela Caputo & Jeremy Gorner, *Small Group of Chicago Police Costs City Millions in Settlements,* CHIC. TRIB. (Jan. 30, 2016), http://www.chicagotribune.com/news/ct-chicago-police-misconduct-settlements-met-20160129-story.html.
238. An officer is charged with a rule 14 violation if s/he makes "a false report, written or oral." This act is deemed "expressly prohibited" by the City of Chicago, but rarely enforced. *See* RULES AND REGULATIONS OF THE CHIC. POLICE DEPT. (Apr. 2015), *available at* http://directives.chicagopolice.org/lt2015/data/a7a57bf0-12d7c186-a4912-d7c1-8b12822c2ca106c4.html.
239. Superintendent Rodriguez resigned after he was exposed for his friendship with a felon. According to Rule 47 of the police code, officers are prohibited from associating with convicted criminals. There were many other problems facing the department at that time that also could have contributed to the resignation. Pam Belluck, *Top Chicago Police Official Will Retire Over Disclosure*, N.Y. TIMES (Nov. 15, 1997), http://www.nytimes.com/1997/11/15/us/top-chicago-police-official-will-retire-over-disclosure.html.
240. Davey & Williams, *supra* note 122.
241. *Id*.
242. *Police Brutality in Chicago: Dark Days*, THE ECONOMIST (Apr. 25, 2015), http://www.economist.com/news/united-states/21649503-citys-police-have-yet-put-their-murky-past-behind-them-dark-days.
243. The Mayor had also referred to closing the dark chapter of the Burge scandal in 2013 when a $ 12.3 million settlement was reached for Area Two torture victims. Hal Dardick & John Byrne, *Mayor: 'Sorry' for Burge Torture Era*, CHIC. TRIB. (Sept. 11, 2013), http://articles.chicagotribune.com/2013-09-11/news/chi-city-council-settles-burge-torture-cases-for-123-million-20130911_1_burge-victims-burge-era-torture-era.
244. *Police Brutality in Chicago*, *supra* note 242.

Douglas A. Berman

MONTGOMERY'S MESSY TRIFECTA

Montgomery v. Louisiana[1] is a dynamic and multifaceted Supreme Court ruling sure to engender plenty of extended analysis—and plenty of lower-court litigation—in the years to come. In this short commentary, I seek only to spotlight the import and impact of Montgomery arriving at the Court at the intersection of three conceptually challenging and jurisprudentially opaque areas of law.

First, *Montgomery* came to the Court as an Eighth Amendment case requiring the Justices to struggle yet again with the counter-majoritarian question of what limits the Cruel and Unusual Punishments Clause puts on government powers to impose certain sentences on certain defendants for certain crimes. **Second**, Montgomery came to the Court as a retroactivity case requiring the Justices to struggle with the practical question of how new constitutional rules are to apply to old and seemingly settled criminal judgments. **Third**, Montgomery became a federalism case because the Justices, when granting certiorari review, added the jurisdictional question of whether the Court even had authority to review how Louisiana had implemented the Supreme Court's prior decisions on Eighth Amendment and retroactivity issues.

Each of these three areas of law—Eighth Amendment limits on sentences, retroactivity of new constitutional rules, and federal review of state criminal adjudications—are so intricate and so important that my aspirations here are quite modest. Specifically, my goal in the next few pages is to explain my concern that the biggest accomplishment of the majority opinion in *Montgomery* was achieving a messy trifecta: I fear that, through one relatively short opinion, the Supreme Court managed to make each of these areas of law significantly more conceptually challenging and jurisprudentially opaque than they already were.

Eighth Amendment messiness in *Montgomery*

I have previously written about the unique and fundamental line-drawing challenges posed by the Eighth Amendment given that most legislatively authorized sentences must be constitutionally sound, and yet a few such sentences must potentially cross an ethereal line that demarcates a punishment as unconstitutionally "cruel and unusual."[2] Eighth Amendment rulings,

---

Douglas A. Berman is the Robert J. Watkins/Procter & Gamble Professor of Law at The Ohio State University Moritz College of Law.

which regularly split the justices five to four, have long been controversial and can often be convoluted: a prominent commentator once described the Supreme Court's Eighth Amendment work "a jurisprudential train wreck"[3] and the Court has itself admitted that "our precedents in this area have not been a model of clarity."[4]

The Supreme Court recently opened a notable new chapter in its Eighth Amendment jurisprudence via its juvenile sentencing rulings in *Graham v. Florida*[5] and *Miller v. Alabama*.[6] Read together, *Graham* and *Miller* paint a puzzling picture of the Eighth Amendment's limits on government sentencing powers: in *Graham*, the Court adopted a one-size-fits-all *substantive rule* to prohibit juvenile offenders from ever receiving a life-without-parole (LWOP) sentence for any non-homicide offenses; in *Miller*, the Court stressed "individualized sentencing" Eighth Amendment *procedural rules* to prohibit legislatures from applying one-size-fits-all mandatory LWOP sentencing statutes to juvenile homicide offenders.

Not surprisingly given the many substantive and procedural issues raised but left unresolved by *Graham* and *Miller*,[7] there was considerable uncertainty and many conflicting rulings in lower courts concerning exactly whether, when and how a juvenile offender may be sentenced to life without parole even before the Supreme Court took up *Miller* retroactivity issues in *Montgomery*.[8] But the majority opinion in *Montgomery* turns the already puzzling Eighth Amendment picture of *Graham* and *Miller* into a jurisprudential M.C. Escher painting largely because, as Justice Scalia observed in his *Montgomery* dissent, "the majority is not applying *Miller*, but rewriting it."[9]

Before *Montgomery*, the seemingly clearest aspect of *Miller* was to make a particular *procedure* essential before juvenile murderers could be sentenced to life without parole. In the *Miller* Court's own words: "Our decision does not categorically bar a penalty for a class of offenders or type of crime … it mandates only that a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty."[10] In setting forth this procedural requirement for LWOP sentencing, though, *Miller* left unclear what *substantive factors* might still permit a sentencer to deem a juvenile murderer sufficiently culpable and corrupt to still be punished with life in prison. But the *Montgomery* opinion does a jurisprudential 180º: the *Montgomery* majority asserts that *Miller* "did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole" because "[e]ven if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity."[11] According to *Montgomery*, *Miller* in fact did categorically decree "life without parole an unconstitutional penalty for a

class of defendants because of their status—that is, juvenile offenders whose crimes reflect the transient immaturity of youth."[12] So, thanks to the way the *Montgomery* opinion spins the meaning of *Miller*, it now would seem the Eighth Amendment does in fact make a particular *substantive factor* essential before *any* juvenile murderer can ever be sentenced to life without parole—namely there must be a substantive finding that *juvenile's murder did not reflect "transient immaturity."* In setting forth this new substantive Eighth Amendment requirement for LWOP sentencing of juvenile murderers, though, *Montgomery* made far less clear just what *procedures* the Constitution requires when a sentencer is seeking to assess a juvenile's maturity at the time of a murder.

Put simply, *Montgomery* made an already messy Eighth Amendment jurisprudence concerning the sentencing of juvenile offenders even messier.

Retroactivity messiness in Montgomery

Though Eighth Amendment doctrines have always been conceptually challenging and jurisprudentially opaque, they arguably are simple compared to the Supreme Court's modern jurisprudence concerning whether, when and how new rules of constitutional law are to apply to old and seemingly settled criminal judgments. Indeed, the Supreme Court was essentially compelled to take up the issue of *Miller*'s retroactivity because lower courts had split at least three or four different ways when trying to figure out, based on complicated and conflicting Supreme Court retroactivity precedents, whether juvenile defendants sentenced long ago to LWOP under mandatory sentencing statutes must now all get the benefit of the new constitutional rules set forth in the *Miller* decision.

Retroactivity doctrines have been distinctly difficult to assess and unpack in part because of an enduring uncertainty concerning their legal foundation: throughout a half-century as Justices were continuously "confounded by what Justice Harlan called the 'swift pace of constitutional change,'"[13] it was never clear whether the Supreme Court's varied retroactivity pronouncements were based on constitutional provisions and principles *or* were interpretations of habeas statutes enacted by Congress *or* were expressions of the common-law equitable powers of federal courts. In the relatively recent case of *Danforth v. Minnesota*,[14] however, the Supreme Court seemed to clarify that its modern *Teague v. Lane*[15] framework for federal retroactivity analysis does not bind state courts because these doctrines are properly understood as "an exercise of [the Supreme] Court's power to interpret the federal habeas statute."[16]

But, yet again, the majority in *Montgomery* made unclear what little previously seemed relatively clear: in the course of explaining why there was jurisdiction to consider how Louisiana state courts were applying *Teague*, the

Supreme Court declared that some (but perhaps not all) of its retroactivity jurisprudence has a constitutional foundation:

> The Court now holds that when a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule. *Teague*'s conclusion establishing the retroactivity of new substantive rules is best understood as resting upon constitutional premises. That constitutional command is, like all federal law, binding on state courts. This holding is limited to *Teague*'s first exception for substantive rules; the constitutional status of *Teague*'s exception for watershed rules of procedure need not be addressed here.[17]

In other words, despite the Court's seemingly clear prior statement in *Danforth* that "*Teague* is based on statutory authority that extends only to federal courts applying a federal statute, [and thus] cannot be read as imposing a binding obligation on state courts,"[18] the majority opinion in *Montgomery* ruled expressly (1) that *Teague*'s requirement of "retroactivity of new substantive rules is . . . binding on state courts," [19] and that (2) its retroactivity for watershed rules of procedure may or may not be binding on state courts.

Put simply, *Montgomery* made already messy retroactivity doctrines even messier.

Federalism Messiness in *Montgomery*

Neither the state of Louisiana, nor obviously the defendant in *Montgomery* who filed a certiorari opinion, questioned the jurisdictional authority of the Supreme Court to review how Louisiana had implemented the Supreme Court's prior decisions on the Eighth Amendment and retroactivity issues. Presumably Louisiana did not dispute the authority of Supreme Court review because (1) it was clear that the Louisiana Supreme Court had chosen to adopt, for state-law purposes, the federal *Teague* doctrine, and (2) in *Michigan v. Long*,[20] the Supreme Court had decided that, whenever a state court's decision rests primarily on federal law, it was jurisdictionally proper for the Supreme Court to review how the state court resolved the federal-law issue. But even though Louisiana did not question the jurisdictional basis for U.S. Supreme Court review of the decision by the Supreme Court of Louisiana, the justices added this question when granting certiorari review: "Do we have jurisdiction to decide whether the Supreme Court of Louisiana correctly refused to give retroactive effect in this case to our decision in *Miller v. Alabama*?"

Perhaps unsurprisingly, in written arguments to the Supreme Court, both Louisiana and the United States stressed that *Michigan v. Long* provided an appropriate and sufficient basis for the Supreme Court to review how a state court applied federal retroactivity doctrines.[21] But rather than rely on this seemingly uncontroversial ground for its jurisdiction, the *Montgomery* majority opinion decided it could and should base jurisdiction on the previously

discussed flip-flops concerning (1) the nature of the new Eighth Amendment constitutional rule set out in *Miller* (calling it substantive rather than procedural), and (2) the foundation for all of federal retroactivity jurisprudence (calling it based on the Constitution rather than just an interpretation of federal habeas statutes). To the extent that the *Montgomery* majority was eager to rewrite Eighth Amendment laws and retroactivity doctrines, its decision to rest jurisdiction on these fronts is arguably not all that consequential. But, especially given that many parts of the majority opinion in *Montgomery* reads like jurisprudential sleight of hand in light of existing precedents, it is curious and ultimately puzzling that the Supreme Court was not content to rely on more modest grounds to answer the jurisdictional question it created for itself when taking up the case.

Though the ultimate basis the Supreme Court gave for its jurisdiction in *Montgomery* might seem merely a matter of legal semantics, new significant federalism issues might arise now that the Court has stated that the "retroactivity of new substantive rules is best understood as resting upon constitutional premises." [22] In particular, if constitutional provisions and principles serve as the basis for some or all of the Supreme Court's retroactivity doctrines, whether Congress is permitted to restrict federal court's authority to review the lawfulness of state criminal judgments through revisions of federal habeas statutes becomes far more debatable. Before *Montgomery*, the Supreme Court and lower federal courts have generally upheld various limits imposed by Congress on the authority of federal courts to review state convictions and sentences. After *Montgomery*, these rulings and all doctrines limiting federal court review of settled state convictions and sentences are now open to new scrutiny.

Put simply, *Montgomery* made already messy federalism doctrines concerning federal review of state criminal judgments and procedures even messier.

I wish to conclude by noting, perhaps ironically, that I authored an amicus brief advocating for the outcome the Supreme Court reached in *Montgomery*, though based in large part on my view that *Teague* doctrines ought not apply when only a sentence rather than a final conviction is being subject to collateral attack.[23] Thus, my criticisms of the Supreme Court's work in *Montgomery* are focused entirely on its means rather than its ends. Nevertheless, as a long-time student of Supreme Court doctrines regarding Eighth Amendment limits on sentences, retroactivity of new constitutional rules, and federal review of state criminal adjudications, I cannot help but now lament that the *Montgomery* Court managed to make each of these areas of law significantly more conceptually challenging and jurisprudentially opaque than they already were.

NOTES

1. 136 S. Ct. 718 (2016).
2. *See* Douglas A. Berman, Graham *and* Miller *and the Eighth Amendment's Uncertain Future*, CRIMINAL JUSTICE (magazine), Winter 2013, at 19.
3. Benjamin Wittes, *What Is "Cruel and Unusual"?*, POL'Y REV., no. 134, Dec.2005–Jan. 2006, at 16.
4. Lockyer v. Andrade, 538 U.S. 63, 72 (2003).
5. 130 S. Ct. 2011 (2010).
6. 132 S. Ct. 245 (2012).
7. *See* Berman, *supra* note 1, at 19-21; Craig S. Lerner, *Sentenced To Confusion:* Miller v. Alabama *and the Coming Wave of Eighth Amendment Cases*, 20 GEO. MASON L. REV. 25 (2012)
8. *See. e.g.,* Berman, *supra* note 1, at 19-21; Cara H. Drinan, *Misconstruing* Graham *&* Miller*,* 91WASH. U. L. REV. 785 (2014).
9. 136 S. Ct. at 743 (Scalia, J., dissenting).
10. *Miller*, 132 S. Ct. at 2471.
11. 136 S. Ct. at 734.
12. *Id.*
13. *Montgomery*, 136 S. Ct. at 737 (Scalia, J., dissenting, *quoting* Pickelsimer v. Wainwright, 375 U.S. 2, 4 (1963) (dissenting opinion)).
14. 552 U.S. 264 (2008).
15. 489 U.S. 288 (1989).
16. *Danforth*, 552 U.S. at 278
17. *Montgomery*, 136 S. Ct. at 729.
18. *Danforth*, 552 U.S. at 278-79.
19. *Montgomery*, 136 S. Ct. at 729.
20. 463 U.S. 1032 (1983).
21. *See* Brief for State of Louisiana, Montgomery v. Louisiana, No. 14-280 (2015); Brief for the United States as Amici Curae in Support of Petitioner, No. 14-280 (2015).
22. *Montgomery*, 136 S. Ct. at 729.
23. *See* Brief for Douglas Berman as Amicus Curae in Support of Petitioner, No. 14-280 (2015).

David Gespass

WARNING: DETOURS AND ROADBLOCKS AHEAD—THE BUMPY ROAD FROM SELMA TO *SHELBY COUNTY*

The introduction and passage of the Voting Rights Act (VRA)[1] in 1965 was hailed, at the time, as momentous. When President Johnson proposed it, he used the language of an anthem of the Civil Rights Movement, promising "we shall overcome."[2] Long before that, in calling on Congress to insure African-American voting rights, Martin Luther King, Jr. promised:

> Give us the ballot, and we will no longer have to worry the federal government about our basic rights.
>
> Give us the ballot, and we will no longer plead to the federal government for passage of an anti-lynching law; we will by the power of our vote write the law on the statute books of the South and bring an end to the dastardly acts of the hooded perpetrators of violence.
>
> Give us the ballot, and we will transform the salient misdeeds of bloodthirsty mobs into the calculated good deeds of orderly citizens.
>
> Give us the ballot, and we will fill our legislative halls with men of goodwill and send to the sacred halls of Congress men who will not sign a "Southern Manifesto" because of their devotion to the manifesto of justice.
>
> Give us the ballot, and we will place judges on the benches of the South who will do justly and love mercy, and we will place at the head of the southern states governors who will, who have felt not only the tang of the human, but the glow of the Divine.
>
> Give us the ballot, and we will quietly and nonviolently, without rancor or bitterness, implement the Supreme Court's decision of May seventeenth, 1954.[3]

To what extent we have overcome in the past half century and to what extent King's assurances have been borne out is a matter of some debate. Five justices on the Supreme Court have apparently determined that all that needs to be done has been done. (That is not entirely fair and is a bit rhetorical, but much of the majority opinion in *Shelby County v. Holder*[4] is predicated on that contention.)

First, it is useful to put the right to vote in context, which I will discuss in the first section of this article. Once that right is secured, one must ask if

---

David Gespass is an attorney in private practice in Birmingham, Alabama and a long-time member of our editorial board. He is a past president of the National Lawyers Guild and is chair of the board of CAIR Alabama. In 2015, he delivered the Birmingham Public Library's annual Martin Luther King, Jr. lecture, focusing on voting rights, and was the author of the NLG's amicus brief in *Shelby County v. Holder*.

it is sufficient to ensure democratic participation for all citizens generally (whether non-citizens should be entitled to participate in democratic institutions is a serious question, but one left to another day), and to what extent the VRA achieved that end. I will discuss this in section two. I then consider what is required for genuine democracy, a question not often addressed in discussions of the VRA and *Shelby County*. I will, in all modesty, offer my insights in section 3. Finally, in section 4, I argue that, in striving to make real King's prediction, we focus far too much attention on presidential elections and too little on local ones.

I. The right to vote is a human right

The international community has long recognized that the right to vote is a human right. It was clearly enunciated in the Universal Declaration of Human Rights (UDHR) in 1948, which said, "Everyone has the right to take part in the government of his [sic] country, directly or through freely chosen representatives" and that "[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."[5]

The UDHR is simply a declaration and therefore does not have the force of law[6] but, by contrast, the International Covenant on Civil and Political Rights (ICCPR)[7] is a treaty and is legally binding on the countries that ratified it. In fact, as a treaty ratified by the United States, it is the "supreme Law of the Land."[8] It is, however, "non-self-executing," which means that it cannot be the basis for a claim in U.S. courts unless Congress enacts enabling legislation. Needless to say, such legislation has not yet been forthcoming. Among other things, the ICCPR codifies the human right to vote, insuring that every citizen has the rights:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.[9]

Before going further, a word about human rights is in order. They are not immutable. On the contrary, the concept of human rights has evolved over the centuries and continues to develop and expand.[10] The self-evident truths and unalienable rights the Declaration of Independence referred to were seen by many, including its principal author, in 1776 to be compatible with chattel slavery. Nor were they seen to extend to the land's indigenous people.[11] Whatever debate we may have about human rights today, it is universally acknowledged that they extend to every human being. There is today

an international consensus that recognizes human rights that are far more extensive than those recognized in such documents as the Declaration of Independence, the Constitution or France's Declaration of the Rights of Man and of the Citizen. No doubt, a century from now those rights we recognize today will be considered inadequate, if not primitive.

In any event, human rights are recognized as universal, inalienable and indivisible. They are universal because, as noted, the only prerequisite to having the right to enjoy them is to be born a human being; inalienable, because they cannot be taken away (except, to some extent, as a result of a criminal conviction); indivisible, because no one can pick or choose which ones to honor and which to ignore. Moreover, indivisibility means that full enjoyment of any particular right is dependent on enjoyment of the others. The right to vote, to take the current subject, is pretty hollow to someone who is homeless and wondering where their next meal is coming from.[12] That right, or any other human right, cannot be guaranteed in isolation and its guarantee alone, Dr. King's exhortation notwithstanding, does not insure real improvement in society.[13]

All that being said, one cannot underestimate the importance of the right to vote. The Supreme Court, with seven justices concurring and another concurring in part, stated: "Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right."[14] On the other hand, five justices argued thirty-six years later that, "The individual citizen has no federal constitutional right to vote for electors for President of the United States."[15]

Of course, it is true that there is no federal constitutional right to vote for electors. It is worth recalling that the Constitution speaks rarely and sparingly about voting rights.[16] Indeed, however much we talk about our democracy, the founders appear wary of giving too much franchise to "ordinary" citizens, even the white male landowners who, in 1789, were the only citizens entitled to vote. The Constitution that was adopted in 1789 provided for the direct election only of members of the House of Representatives.[17] The "election" of the president was even more divorced from the citizenry, with "(e)ach State (appointing), in such Manner as the Legislature thereof may direct, a Number of Electors. . .[18] There is no other mention of voting in the original Constitution. In 1803, the procedures were slightly amended, but no greater power was placed in the hands of the people.[19]

Over the years, various amendments addressed the right to vote. In 1870, the Fifteenth Amendment was ratified to insure the right could not "be denied or abridged...because of race, color or previous condition of servitude." In 1913, direct election of senators became the law of the land.[20] In 1920

women were finally given the franchise with the Nineteenth Amendment. After women's suffrage was won, the Constitution said nothing more about voting until 1961 when a veritable flurry (in constitutional terms) of rights were established. The Twenty-First Amendment gave citizens of the District of Columbia the right to vote for presidential electors (they still do not have a voting representative in either house of Congress). The Twenty-Fourth (1964) made poll taxes illegal and the Twenty-Sixth (1971) lowered the voting age to eighteen. The latter two amendments, incidentally, apply only to federal elections.

That is the sum and substance of what the Constitution says about the right to vote. Nowhere, in the founding document of the government that is constantly portrayed as "of the people, by the people and for the people"[21] is the right to vote made sacrosanct. All that is required is that people of color, women and young people over eighteen, not be discriminated against in the exercise of what may better be described constitutionally as the privilege of voting. Presumably, if a state legislature decided that no one could vote, while that might foment a popular reaction, there would be no constitutional impediment.

A couple of other points about elections are in order. It is important to understand that elections are a process, not an event.[22] That is to say, however well organized and appropriately managed the actual polling may be, if the pre-voting process is flawed, so is the election. For example, if only one party has access to media, no one would argue that its electoral victory represents the voice of the people. This internationally-recognized *sine qua non* for a free and fair election illustrates why the *Citizens United*[23] is so pernicious. By disallowing restrictions on campaign spending, it voids limitations that are imposed throughout the world with U.S. government approval and gives the super-rich and their super-pacs extraordinarily disproportionate influence.[24] Similarly, if those who administer elections are overtly partisan, or seen as being so, there is precious little trust in the fairness of the outcome, regardless of whether the votes were counted properly or not.

Finally, a genuine election, as contemplated by the UDHR and ICCPR must be free, fair and transparent. A free election is one in which the voters are able, without intimidation or obstruction, to cast their votes as they choose. A fair election requires that the process permit every contestant to participate fully, to have a platform to express their views and to seek votes. Transparency is obviously necessary to insure both that elections are free and fair and are so perceived.

II. Is securing the right to vote sufficient to ensure universal democratic participation?

The VRA was first enacted in 1965. It was subsequently reauthorized, by overwhelming majorities in both houses of Congress, in 1970, 1975, 1982

and 2006. The most recent authorization passed the House by a vote of 390-33 and the Senate by 98-0. It was signed into law by George W. Bush. In considering reauthorization, Congress compiled a legislative record of more than 15,000 pages. The VRA is generally recognized as extraordinarily successful.[25] Justice Roberts based his opinion gutting the Act on the remarkable success it had achieved.[26]

One critical provision, §4(b), created what are called "covered jurisdictions." These are jurisdictions, states or subdivisions, that were required, under §5 of the Act, before making any changes to their voting laws, to have those changes "precleared," either by getting Justice Department approval or the approval of a three-judge federal court in the District of Columbia. Initially, they were "those States or political subdivisions that had maintained a test or device as a prerequisite to voting as of November 1, 1964, and had less than 50 percent voter registration or turnout in the 1964 Presidential election."[27] Certain alterations in the coverage formula were made with the reauthorizations of 1970 and 1975. Nevertheless, the bulk of those jurisdictions were southern states with a long history of preventing African-Americans from voting, either by open terror or such devices as poll taxes and literacy tests.

Almost invariably, prior to the passage of the VRA, by the time a particular artifice to suppress the vote was deemed illegal, years had passed, elections had taken place, (white) people had taken office and the artifice under attack had been replaced, necessitating another fruitless cycle. By requiring those jurisdictions that had continued to flout the Fifteenth Amendment,[28] to preclear any and all changes they wanted to make in their voting laws or procedures, the VRA placed the burden on those jurisdictions to demonstrate the changes would not suppress voters' rights. The process of securing preclearance from the Justice Department was relatively fast, easy and inexpensive, certainly as compared to litigating allegations of voter suppression. Unquestionably, the burden on covered jurisdictions to get preclearance was de minimis compared to the burden that the victims of discrimination and suppression had to bear to eliminate barriers that had been erected. The Act was intended to and, at least in the covered jurisdictions, did "shift the advantage of time and inertia from the perpetrators of the evil to its victim."[29]

Congress, however, included in the Act a fairly simple way for covered jurisdictions to be relieved of the burden of securing preclearance. The 1982 reauthorization amended §4(a) to allow any such jurisdiction, or subdivision, to terminate its coverage. It could "bail out" of coverage through a declaratory judgment in the United States District Court for the District of Columbia. To get the judgment, it had to demonstrate that, for the preceding ten years, it met the following conditions:

- No test or device was used within the jurisdiction for the purpose or with the effect of voting discrimination;
- All changes affecting voting were reviewed under Section 5 prior to their implementation;
- No change affecting voting was the subject of an objection by the Attorney General or the denial of a Section 5 declaratory judgment from the District of Columbia district court;
- There were no adverse judgments in lawsuits alleging voting discrimination;
- There were no consent decrees or agreements that resulted in the abandonment of a discriminatory voting practice;
- There were no pending lawsuits that alleged voting discrimination;
- Federal examiners were not assigned; and
- There were no violations of the Constitution or federal, state or local laws with respect to voting discrimination unless the jurisdiction established that any such violations were trivial, were promptly corrected, and were not repeated.[30]

Before *Shelby County* was decided, between 1976 and 2013, some 52 municipalities, counties and other political subdivisions of covered jurisdictions had taken advantage of the bailout provision. The overwhelming majority were by consent decree, which is to say the Justice Department agreed to the outcome.[31] In short, the bar to bailing out of coverage was not very high. All that was required was not violating the Act.

Shelby County, however, was not in a position to bail out. Calera, a city in Shelby County, was the defendant in a case brought by the Justice Department alleging multiple violations of §5 although, in fairness, no explicit racial disparity was alleged.[32] That being said, one of the facts that underlay the suit was that a change in Calera's election law resulted in the city's lone African-American city councilor, Ernest Montgomery, losing an election.[33] When the change was voided to redress the Section 5 violation, he was, not surprisingly, reelected.[34] Faced with that problem, Shelby County decided it was better to challenge the constitutionality of the VRA than to comply for ten years so it could bail out.

It should also be noted that §3 allowed for violators to be "bailed in" through court orders that required future compliance and supervision. Thus, the bailout provision was not static. Other jurisdictions could be added if courts found the need to do so and covered jurisdictions could be relieved of their obligations if they showed a history of compliance.

Much has been written about the *Shelby County* decision and it has been excoriated by writers far more capable than I, including Justice Ginsberg in her dissent, so I will be relatively brief in explaining Justice Roberts's majority opinion. The decision found only §4(b) unconstitutional. That is, it determined that so much progress had been made since its earliest versions[35] that the formula for deciding which jurisdictions should be covered was outdated and could not be sustained. All Justice Roberts required, therefore, was for Congress to agree upon a new formula, one which would pass constitutional muster, as if that could possibly happen in the current toxic environment.

Roberts noted that, in covered jurisdictions, "turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels."[36] He went on to note that the gaps between black and white voter registration levels in Alabama, Georgia, Louisiana, Mississippi, South Carolina and Virginia had shrunk substantially.[37] Clever politician that he is, Roberts came to praise the VRA while burying it.[38]

Indeed, the accomplishments of the VRA, those noted by Roberts and many others, are indisputable. Gains made since 1965 are enormous; the ground has shifted and the landscape has altered. Yet, as the old saying goes, everything has changed and nothing has changed. Instead of poll taxes, we now have voter ID laws that overwhelmingly burden the poor, the elderly and disabled and most disproportionately impact people of color. Instead of literacy tests, many states have felon disenfranchisement so, not only are African-Americans incarcerated at an unprecedented rate, they are often deprived, even after release, of their fundamental human right to vote.[39]

And what has the ballot won for the mass of African-Americans who, again disproportionately, remain mired in poverty, who have been unable to accumulate wealth? The vaunted "American dream" is more and more out of reach for the vast bulk of Americans of any ethnicity. It is, for the overwhelming majority of African-Americans so far out of reach it is no longer even a pipe dream.

As if voter ID and felon disenfranchisement were not enough, old, rich, white men can always turn to gerrymandering. Drawing of odd-shaped voting districts is only illegal if it is done along racial lines. There is nothing as yet to prevent politicians from drawing such lines for political advantage. If it is merely coincidental that elected African-American officials find themselves in a, for now, apparently permanent minority, who are they to complain? The unfortunate fact that their votes in legislatures may be consigned to irrelevance is a happenstance of history, not a violation of their rights. After all, they *were* elected.

What then does democracy look like?

Democracy can take many forms. Perhaps the purest form of democracy is reflected in small towns where the entire populace meets to make decisions. Obviously, that is less practical with larger populations where representative democracy prevails, in which people can elect people to make decisions.[40] And representative democracy itself takes different forms. There is the parliamentary system where members are elected by district and the parliament chooses its leaders from among those. There is a system in which there is also an elected president, chosen by a vote of the entire population. Within these forms are any number of variations. What is essential, under the UDHR and the ICCPR is that, in one way or another, everyone can participate in government "directly or through freely chosen representatives" and can "vote and to be elected at genuine periodic elections…by universal and equal suffrage and…by secret ballot."[41]

We are often told that Greece is the cradle of democracy because everyone there participated in its governing decisions. That may have come as news to the slaves in Athens, but all citizens did have a voice. Similarly, as is well known, voting in our American "democracy" was at first limited to white male property owners and, as noted, even they did not vote for that many positions. In fact, the Constitution, so worshiped by so many on both the left and right as the foundation that makes the United States the most important bastion of democracy in this troubled world, says little about voting, mentioning it five times, mostly in amendments, as has been discussed *infra*.[42]

But let us look for a moment at the electoral college which still selects the president. Even though today there is presumably universal suffrage to vote for electors,[43] the practical effect of our system of selecting a president, where all a state's electors are obligated to vote for a particular candidate, is that there are relatively few "battleground" states where one's vote really matters.

As noted, the ICCPR, a treaty the United States has ratified which is therefore the supreme law of the land,[44] calls for "universal and equal suffrage." This raises some interesting questions. The Constitution provides for the selection of the president through the electoral college process. It also provides, via the ICCPR, that elections should be by "universal and equal suffrage." It is self-evident that the selection of a president may arguably be by universal suffrage, but it is certainly not equal. Leaving aside that less populous states have proportionately more electors than those with larger populations,[45] only theoretically is a vote in New York (overwhelmingly Democratic) or Alabama (overwhelmingly Republican) equal to a vote in a battleground state like Ohio or Pennsylvania, where the winner is really in play. The right to cast a meaningless vote is hollow indeed.

Moreover, it is evident that the electoral college results do not necessarily reflect the will of the populace. In 1992, Bill Clinton received 43.01 percent of the popular vote, compared with 37.45 percent for George Bush and 18.91 percent for Ross Perot.[46] Nevertheless, Clinton got 68.8 percent of the electoral college vote, winning by 370–168, even though it is safe to say that, among Perot voters, Bush would have been the overwhelming second choice. Similarly, in 2000, George W. Bush lost the plurality of the popular vote to Al Gore, 47.87 percent to 48.38, with Ralph Nader receiving 2.74 percent. Yet, he won in the electoral college by 50.47 percent to 49.53 percent (271–266).[47]

But, perhaps even more anti-democratic than the Byzantine electoral college are the ways in which sectors of voters are disenfranchised. In other countries, election officials actually go to jails to insure the incarcerated may vote.[48] No such efforts are made in the United States, even for pretrial detainees, presumed innocent, who have not legally lost their right to vote. If they do not figure out how to get an absentee ballot and send it in, they are generally out of luck. There are eleven states in which convicted felons may never have their right to vote restored. In nineteen others, they must complete their terms of probation or serve their sentences and successfully complete parole. In four, they must complete their terms of incarceration and parole and in fourteen, they must complete their terms of incarceration. In only two states may convicted felons vote by absentee ballot while incarcerated.[49]

Two points, other than the hodge-podge of state laws that make the right to vote dependent on residence, are significant in light of these statistics. I again emphasize that the right to vote is a human right, inalienable, universal and indivisible. Indeed, it is a fundamental right of citizenship. Depriving one of that right by virtue of a criminal conviction flies in the face of that fundamental precept. Certainly, doing so permanently does. There is really no principled grounds upon which such deprivation can be justified.

Secondly, the fact that such deprivation in the United States falls disproportionately on the poor, and expressly on poor people of color, makes the practice even more abhorrent. It is, indeed, a means to restore, by a new artifice, poll taxes, literacy tests and the other devices intended to prevent sectors of the population from exercising the franchise.[50] A fair argument can be made that felon disenfranchisement, even if justifiable on other grounds, violates the Fifteenth Amendment.

There are certain prerequisites to a truly democratic process. There must be broad participation. That necessitates efforts by the government to insure registration and participation. To illustrate the point, let me discuss Venezuela. I have accompanied two elections in Venezuela and visited as part of a solidarity delegation one other time. On that occasion, we had a lengthy meeting with Tibisay Lucena, president of the National Electoral Council (CNE). The

differences in the way registration and participation are approached there and in the United States are stark. In Venezuela, as in almost every country, voters must have identification in order to vote. There, however, the CNE sends its people out to rural areas to insure that every eligible voter is registered and has proper ID. Registration booths are found in subway stations in Caracas. The government there facilitates registration. By contrast, in Alabama where I live, the principal form of ID is a driver's license and the state attempted to close some 31 driver's license offices for budgetary reasons. They are now open one day a week and there is a bill pending in the legislature to double that. Even if the offices are open, people who can least afford it often need to take a day off from work and travel many miles at significant cost in order to get identification. The cost of the ID itself, which some states will waive for those who cannot afford it, is far less than the cost of taking the time to travel to an office to get it.[51]

Similarly, democracy requires ease of access to the polls. It does not help to have the right to vote and an ID card if you cannot get to a polling station. Nor does it help if you have to take off work to vote and cannot afford to do so or if you cannot get off work and have to choose between working and voting. Also necessary are rules that permit the broadest possible participation in elections. Any restriction must be viewed with skepticism and any doubt about its value must be resolved against it and in favor of the right to vote.

Most important, voters must believe that exercising the right to vote means something, that it will actually make a difference in their lives. When I accompanied the presidential election in Venzuela in 1999, long lines had formed at polling stations before polls opened. Despite all the criticisms of the process from the United States government, it was evident in any number of ways, the large turnout and the long lines being only one indication, that Venezuelans really believed that their votes mattered. The most recent parliamentary elections, which the opposition won decisively, demonstrated the vitality of Venezuelan elections, regardless of what one might think of the outcome.

III. Fulfilling Dr. King's prediction

The 2016 presidential election has dominated the news, as do all presidential elections. Debates and analysis on corporate mass media (which generally emphasize how well the candidates are doing, as opposed to discussing their actual positions and programs). And, again as usual, we are being told this is the most important election in (choose one) our lifetime, a century, ever! Bernie Sanders called for a "political revolution" to seize control of the country from the billionaire class and place it in the hands of the "middle class." Parenthetically, with all the talk of the importance of the middle class and

how the middle class used to thrive and now is suffering and shrinking, no one ever seems to define it and everyone seems to think themselves part of it.

But is it really enough to thoroughly vet the presidential candidates, to study their positions and decide who is the best choice? Will electing the best of all possible presidential candidates mean that everything would be for the best in this best of all possible countries? Can we really engineer a political revolution by starting with the chief executive?

When Dr. King said "give us the ballot," he did not speak of presidents, but of governors and judges. The more local the elected official, the more directly will that official impact your life. School boards set the agenda for local education and how well or poorly they do their jobs impacts not just the students, but every member of the community. City councilors and mayors are the people we have to rely on to make sure overgrown lots are mowed, collapsing houses are repaired or torn down, garbage is picked up and the potholes in our streets repaired (this is where the rubber literally meets the road). You need not be a lawyer to be relatively confident that you are more likely to have business with a local judge than with the president.

In fact, "the real touchstone of the Sanders campaign is not the delegate count, Convention or General Election, but how much he and it inspires people to run as progressives for all those local elections…"[52] I would add, that is not limited to this year's elections. I would say, regarding the success of Sanders's presidential run what Zhou Enlai was reputed to have said when asked if the French Revolution was successful. "It's too soon to tell."

Moreover, local elections actually give candidates of modest means a chance to win and certainly give them the opportunity to talk to people about their immediate needs and how to meet them. Bernie Sanders's political career began because he was a successful mayor of a small city in Vermont. If that success could be replicated across the country, one school board or city council or county commission at a time, those successes will actually consolidate progressive change and help it to spread. The Sanders campaign evoked a lot of passion, just as Obama's did eight years ago. But there are dangers. Sanders's loss of the nomination, despite having been almost inevitable, soured many of his supporters, particularly the youth, on political activism. If he had won there would have been even greater dangers. He would certainly not have been able to implement everything he advocated and would likely have been blocked far more often than he succeeded. His presidency, like Obama's, would not have met the expectations of his constituents.

The answer to such failures, however, is not to drop out. It is to return to our homes and organize. A part of organizing in a democracy is to fight for and win local elections. A political revolution cannot, and will not, be built

from the top down. If that was Sanders's goal, it was doomed. If, on the other hand, his goal was to inspire more political activity, to get more people who share his views to engage in the political process on a day-to-day basis where they live, that is realistic. The Sanders campaign may still prove to be the beginning of a political revolution in this country. It could not have hoped to be the culmination of such a revolution, even if he became president.

In short, having the ballot doesn't guarantee that lives will be improved and changes made. It can only do so when large numbers believe it will and exercise their franchise wisely at every opportunity. Those were the caveats Dr. King chose not to dwell on but, nearly sixty years after he called for the ballot, they are the caveats we now need to focus on.

IV. Postscript

There have been several voting rights cases decided in district courts since *Shelby County* and they tend to confirm the continued need for supervision of states seeking to disenfranchise their citizens. A slew of restrictive laws were passed and several have already been deemed illegal.

A Texas voting ID law, passed in 2011, before *Shelby County*, but not implemented until the day after *Shelby County* was decided was found to violate the Voting Rights Act by a district court in 2014.[53] The circuit court has recently reversed in part and remanded for additional fact finding, but did find that the law was enacted for a discriminatory purpose and thus violated the VRA.[54]

In North Carolina, a law enacted after *Shelby County* was decided was found to violate the VRA by the Fourth Circuit, ruling the law targeted African-American voters with "almost surgical precision."[55] Wisconsin, Kansas and North Dakota, which unlike Texas and North Carolina were not covered jurisdictions under the VRA, have also had voter ID laws declared unlawful.[56]

Perhaps ironically, the latter three cases make one of Roberts's points in *Shelby County*. He did not find the VRA unconstitutional in principle. Rather, he found the formula for determining which jurisdictions should be covered outdated. With the proliferation of voting restrictions around the country, it is almost as if Congress should determine which jurisdictions should be uncovered. Nevertheless, as discussed *infra*, the VRA provides for continuing court supervision of any jurisdiction found to be in violation, so there is no reason why Wisconsin, Kansas and North Dakota cannot be covered going forward.

But the greater problem and tragedy is that, for the foreseeable future, the advantage of time and inertia has now shifted back from the perpetrators of the evil to its victims, with all the time and cost that entails.

NOTES

1. 42 U.S.C. § 1973 et seq. As discussed *infra*, the original Act has been reauthorized and amended several times.
2. See Lyndon Baines Johnson's Special Message to Congress, delivered to a joint session on March 15, 1965. http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650315.asp.
3. Martin Luther King, Address at the Prayer Pilgrimage for Freedom, Washington, D.C., April 17, 1957. The text can be found here: http://kingencyclopedia.stanford.edu/encyclopedia/documentsentry/doc_give_us_the_ballot_address_at_the_prayer_pilgrimage_for_freedom/ Here is one of the sites where one can listen to the entire speech from King himself: https://vimeo.com/34759104
4. 570 U.S. _____, 133 S. Ct. 2612 (2013).
5. UDHR, Art. 21. The text can be found at http://www.un.org/en/universal-declaration-human-rights/
6. The UDHR is, however, generally recognized as part of customary international law, so can be seen as having the force of law in the international arena.
7. Text can be found at http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.
8. U.S. CONST., Art. VI. This is also a distinction between the ICCPR and the UDHR.
9. ICCPR, Art. 25.
10. The South African organization, Youth for Human Rights, has produced a short video that describes the evolution of the concept. Go to http://www.youthforhumanrights.org/ and click on "The Story of Human Rights."
11. Among the other grievances against George III listed in the Declaration was that "He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.
12. Economic human rights, such as the rights to adequate food, clothing, shelter, health care and education are embraced in the International Covenant on Economic, Social and Cultural Rights, which the United States has yet to ratify. http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx.
13. Whether King really believed what he said about the ballot in 1957 or whether he was making a rhetorical point and whether, if he believed it in 1957 he still believed it a decade later, are all matters of speculation.
14. *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964)
15. *Bush v. Gore*, 531 U.S. 98 (2000), citing McPherson v. Blacker, 146 U.S. 1 (1892), which held that the individual states' authority to appoint electors is plenary.
16. There are those who argue that the right to vote is implicit in the Constitution because it is mentioned five times. *See for example,* Garrett Epps, *Voting: Right or Privilege?* ATLANTIC (Sept. 18, 2012) *available at* http://www.theatlantic.com/national/archive/2012/09/voting-right-or-privilege/262511/.
17. U.S. CONST., Art. I, Sec. 2
18. U.S. CONST., Art. II, Sec. 1.
19. U.S. CONST., Amend. 12.
20. U.S. CONST., Amend. 17.`
21. Abraham Lincoln, Gettysburg Address. It is widely available, including in school text books not approved by the Texas Board of Education. Here is one source: http://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm.
22. *See for example*, the United Nations Office of the Special Adviser on Gender's "Women & Elections: Guide to Promoting the Participation of Women in Elections," Chapter 7 on election observation, at http://www.un.org/womenwatch/osagi/wps/publication/Chapter7.htm.
23. Citzens United v. FEC, 558 U.S. 310 (2010)

24. I have been chosen by the U.S. government to observe or otherwise participate in several elections in Central Europe and Asia and limitations on campaign spending and activity have always been imposed.
25. *See for example*, Samuel Issacharoff, *Voting Rights at 50* (Jul. 23, 2015). ALABAMA LAW REV., Vol. 67:2, 387 (2016). "Without doubt, Section 5 of the Act, the provision that prevented re-imposition of disenfranchising devices inherited from Jim Crow, was the most successful civil rights statute in American history." *Id*. at 388.
26. See notes 28 and 29, *infra*.
27. 133 S. Ct. at 2616.
28. "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."
29. South Carolina v. Katzenbach, 383 U.S. 301 (1966)
30. 42 U.S.C. § 1973b(a)(1) (2005). Prior versions of the VRA included a bailout provision. The greatest change here was that subdivisions of states were permitted to avail themselves of the remedy. *See* Hebert, J. Gerald, *An Assessment of the Bailout Provisions of The Voting Rights Act* in VOTING RIGHTS ACT REAUTHORIZATION OF 2006 (University of California, Berkeley Press).
31. http://www.justice.gov/crt/section-4-voting-rights-act.
32. United States v. City of Calera, Alabama, No. CV-08-BE-1982-S (N.D. Ala. Oct. 29, 2008).
33. Following passage of the VRA, it was far more difficult to exclude African-Americans from voting. A favored tactic to respond was to change voting in majority white local election jurisdictions from district to at-large, thus ensuring no African-American would be elected.
34. http://www.naacpldf.org/story/defending-voting-rights-act; Scottie Vickery, *Calera Finally Has Six New Council Members*, BIRMINGHAM NEWS, Nov. 10, 2009, *available at* http://blog.al.com/spotnews/2009/11/calera_finally_has_six_new_cou.html
35. The first two reauthorizations of the Act made some minor adjustments to the formula for determining which jurisdictions would be covered and, as a consequence, added a few.
36. 133 S. Ct. at 2621
37. 133 S. Ct. at 2622
38. Goetting, Nathan and Gespass, David, NLGR _____
39. See MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (2010).
40. There are those who say the United States is a republic, not a democracy. To the contrary, a republic is simply a form of representative democracy as opposed to direct democracy. Others, more accurately, say it is an oligarchy, albeit with democratic forms. In *State and Revolution*, Lenin argued that "A democratic republic is the best possible political shell for capitalism (establishing power) so securely, so firmly, that no change of persons, institutions or parties in the bourgeois-democratic republic can shake it."
41. Note 9, *infra*
42. U.S. CONST., Amend. XII.
43. The practical preclusion of sectors of the eligible voting populace will be discussed *infra*.
44. U.S. CONST., *supra* note 8.
45. Each state has electors based upon the total of its representatives, which is by population, and each state has two senators regardless of population.
46. http://uselectionatlas.org/RESULTS/national.php?year=1992
47. http://uselectionatlas.org/RESULTS/national.php?year=2000. This, of course, does not even address the Supreme Court decision in *Bush v. Gore*, 531 U.S. 98 (2000) that halted the recount in Florida on the grounds that it would deny equal protection to the voters whose votes were not being recounted, a decision so bizarre that the per curiam majority specifically precluded it from being precedent in any future case.

48. The author's wife has participated in at least twenty elections in countries in eastern Europe, the Balkans, Asia and Latin America as an observer or in other, more active, capacities, and has gone to jails to observe voting.
49. http://felonvoting.procon.org/view.resource.php?resourceID=000286.
50. *See* ALEXANDER, *supra* note 31.
51. Alabama Law Enforcement Agency press release of September 30, 2015, *available at* http://whnt.com/2015/09/30/alea-announces-driver-license-office-closures-includes-two-in-north-alabama/. *See also* Lyman, Bryan, *Alabama Will Reopen Closed DMV Offices in Black Counties*, GOVERNING (magazine), http://www.governing.com/topics/politics/drivers-license-offices-will-reopen-on-limited-basis.html (October 20, 2014)
52. Roger Blacklow, on my Facebook page.
53. Veasey v. Perry, 71 F. Supp. 3d 627 (S.D. Tex. 2014)
54. Veasey v. Abbot (5th Cir. July 20, 2016). The complete history of the case can be found at http://www.campaignlegalcenter.org/case/veasey-v-abbott-0
55. N.C. State Conference of the NAACP v. McCrory (4th Cir., 2016). Its history can be found at http://moritzlaw.osu.edu/electionlaw/litigation/NAACPv.McCrory.php.
56. One Wisconsin Institute, Inc. v. Nichol, 15-cv-324-jdp (W.D. Wisc. May 12, 2016); Fish v. Kobach, 16-2105-JAR-JPO (D. Kan., May 17, 2016); Brakebill v. Jaeger, 16-cv-008 (D. N.D. August 1, 2016).

Sue Udry

BOOK REVIEW: *CRASHING THE PARTY: LEGACIES AND LESSONS FROM THE RNC 2000*

By Kris Hermes, PM Press, 2015. $22.95 337 pp.

We knew exactly what would happen last July at the Republican and Democratic national conventions. City governments would make plans to restrict protests. Police departments would purchase riot gear, less-than lethal weapons, and other special equipment. Insurance policies would quietly be bought. Some assortment of federal, state and local police would infiltrate activist spaces, lurk on listserves, and stalk social media. In the mass media, a narrative would be crafted about dangerous protesters and outside agitators intent on crashing the parties.

Once the protests began, there would be agents provocateur, mass arrests, preemptive arrests, false arrests, police violence, abuse in jails, scapegoating of "ringleaders" and all manner of repression.

That's exactly what happened at the RNC in Philadelphia in 2000. Kris Hermes was there as a social justice activist and member of the R2K legal collective. Hermes has written about his experience in *Crashing the Party*. He documents how the people fought back using jail solidarity, court solidarity, and democratically-run legal collectives that engaged activists in the legal process to ensure political goals were not subverted.

Hermes walks us through the events that transpired—the preemptive raids, mass arrests, surveillance and infiltration, aggressive prosecutions—and analyzes the fightback: What worked, what didn't, and why. What comes through most clearly is the power of legal collectives to protect not only the rights of activists, but their political goals and their desire to act in solidarity with each other in opposition the state. Legal workers and legal collectives, rather than lawyers primarily obligated to the best interest of their individual clients, are best positioned to "empower activists to take control of their own [collective] legal predicament."[1]

August 1, 2000 was a day of action against the criminal justice system. Police responded to the protests with violence and mass arrests, and by the end of the day 420 people were in jail. While most of the arrestees were detained during the protests, 75 never even got the chance to exercise their First Amendment rights that day.

Sue Udry is a legal worker member of the NLG, and serves on the board of the DC Chapter. She is the executive director of the Bill of Rights Defense Committee/ Defending Dissent Foundation.

Preemptive raids on activist spaces are a favorite tool of the state because they allow it to smother the message in the cradle and minimize the impact of protests by feeding the "dangerous protester" narrative, depriving activists of art, flyers, and other tools of dissent and locking some of the leading voices away from the streets at a crucial time. Using those metrics, authorities in Philadelphia hit one out of the park.

Almost two weeks before the protests began, the city raided and temporarily shut down the Spiral Q Puppet Theater using the authority of the Department of Licenses and Inspection. The raid disrupted workshops with single moms and teenagers that were in progress that afternoon, sowing fear and forcing the removal of puppets, signs and banners. Then, on August 1, a 120-year-old Victorian trolley and bus barn serving as a puppet warehouse was surrounded by Philadelphia police. Activists inside refused to let police in without a warrant.

> More than two dozen police cruisers lined the avenue and scores of cops… surrounded the warehouse. At least three helicopters hovered loudly above. A handful of cops were on the roof and many had formed a barricade to prevent people from approaching the building....The city had staged an elaborate drama full of hysteria and allegations to justify what it was about to do.[2]

Police began using chainsaws to get into the building, but when a search warrant was obtained, the activists inside agreed to come out (but not without setting conditions, including that their lawyer be allowed to accompany police on their search of the building and that they have access to the media). The search warrant was kept under seal for 30 days, allowing the city to conceal the fact that Pennsylvania State Police had infiltrated the warehouse and that the "evidence" of illegal activity was based on the red-baiting of a right-wing think tank.

The raid accomplished its goals: garbage trucks carted away "puppets, signs, banners, leaflets, and other political props," along with personal property including backpacks, clothing, identification, and the equipment used to make the props like tools, paint, a sewing machine.

Deprived of the visuals designed to convey their political message, protesters had difficulty rebutting the City's charge that they had no political message and were just in town to make trouble.

Seventy-five people who were present at the warehouse that day were arrested, jailed, and zealously prosecuted, each charged with several misdemeanors and hefty bails of $10,000 to $15,000.

Hermes takes us inside the jail with the over 400 people arrested on August 1 as they implemented a jail solidarity action. Activists spent their long hours of confinement, beginning while in the police buses, in spokes-

councils, discussing what jail solidarity would look like, making plans to engage in non-cooperation including refusing to identify themselves or be fingerprinted, refusing to move under their own power, locking arms and even stripping naked. Jailers responded with tactics of their own: using excessive force, denying needed medical attention and prescription drugs and other necessities, and sexual abuse and harassment. Those tactics were met with further non-cooperation.

On the outside, rallies, vigils and press conferences were organized, and R2K reached out to the faith community to secure its support. By August 6, about 150 arrestees began a hunger strike, but the city was unmoved, refusing to negotiate, demanding excessively high bails, denying access to lawyers, and delaying arraignments.

Many of those arrested on misdemeanor charges were detained for two weeks, some spent time in solitary confinement. They paid excessive bails and charges were not reduced. But, Hermes argues, the campaign "gained the support and solidarity of countless people in Philadelphia, across the country, and around the world."[3] He also notes that the goal of this solidarity action (unlike at the DC IMF/World Bank protests) was to include those people charged with felonies. Hermes and other activists assert that the refusal of those charged with misdemeanors to sever ties with those charged with felonies led to reduced felony bails.

Once the last arrestee was out of jail, the long-haul work began. Hermes detailed the excellent work of the R2K legal collective in keeping arrestees and their supporters informed, organizing meetings in several cities, promoting solidarity and a political trial strategy, and *winning*. In the end, 300 people were charged with misdemeanors, 43 with felonies. Out of those, 106 took plea bargains and 237 went to trial. Thirteen people were convicted of misdemeanors, one person took a felony plea bargain, but there was not one felony trial conviction, and none of those convicted were sentenced to jail. This was an amazing outcome, particularly considering the city's aggressive prosecution of the protesters.

R2K Legal's true forte was public relations. Hermes notes a "discernable shift in public opinion" as the collective publicized the string of dismissals and acquittals, and the extensive infiltration that the legal process exposed. Coverage of the trials and the sham of the preemptive arrests was not limited to Philadelphia. The regional and national press picked up the story. R2K ensured that the mass arrests, designed to quiet protests and enhance the city's image, backfired.

By all accounts, the court solidarity and political trial strategy had been wildly successful. Combining resistance, theatrics, and repeated legal victo-

ries with an effective PR campaign did more than vindicate the hundreds of defendants. It also served to embarrass the city for its role in silencing dissent. Most important to the R2K Legal Collective and all of the RNC defendants, however, was safeguarding those accused of felonies.[4]

As the criminal cases wended their way through the courts, R2K Legal began to develop a civil litigation strategy, drafting a proposal laying out the "structural relationship between activists, attorneys, and the R2K Legal Collective" that would give more power to activists. By January 2001, R2K Legal had launched a months-long process involving meetings with activists in various cities to discuss strategies and hammer out an agreement on how civil suit costs, labor, and monetary awards would be divided. Activists were adamant that their political demands for injunctive relief would be included in the lawsuit, and that any money won would be paid out to activist groups rather than to individual activists. On August 1, 2001, a year after the raid on the puppet warehouse, a civil suit was filed demanding damages and injunctive relief including "better safeguards against surveillance and infiltration, and stricter enforcement of habeas rights and timely arraignments."[5]

A month later, R2K Legal and the rest of Philadelphia learned about an insurance policy the city had bought prior to the convention to protect police from liability for "things like false arrest, wrongful detention or imprisonment, malicious prosecution, assault and battery, discrimination, humiliation, violation of civil rights."[6] That insurance policy allowed the city to hire a high-powered law firm to defend them in civil suits, turning the "slam dunk" puppet warehouse lawsuit into a vehicle for the city to harass activists and activist groups with numerous and wide-ranging subpoenas and depositions.

The city's strategy drained the time and resources of R2K Legal, the activists and their lawyers, whose priority still remained the ongoing felony trials. The city's strategy also brought the other half-dozen or so civil suits to heel. A gag order on all the settlements means that we don't know the dates on which they were settled or the terms, but over the spring and summer of 2001 they all appear to have been settled. Luckily a transcript from a closed hearing in the puppet warehouse case was inadvertently filed as a public document. The *Philadelphia Daily News* reported that an award of $72,000 would be paid out of the city's insurance policy.[7]

While the civil litigation strategy didn't get the results desired or expected, the work R2K Legal did to create a framework to empower activists and elevate their political priorities was groundbreaking.

What to make, then, of the Philadelphia experience?

Arguably, it is in the realm between the legal world and the world of political organizing where, when boundaries are pushed, unexpected results can

occur. The successes of R2K Legal came from a combination of legal and political strategies developed by activists and defendants.[8]

There was a brief renaissance of legal collectives in the early 2000s, but too many were short-lived, organized around a single event, or, for whatever reason, just unable to survive. These groups were democratic. They sought to empower activists and ensure that political goals would not be undermined by police and legal processes. The demise of so many of them has created a vacuum—just as the powers of the state have ascended in the post-9/11 era.

How will legal workers collaborate with political comrades and attorneys to develop creative means of keeping dissent alive and thriving in the new era of increased state surveillance and disruption?

It's a crucial question for the National Lawyers Guild—one Hermes, by sharing instructive stories from a past struggle, helps to answer.

_____

NOTES

1. Kris Hermes, Crashing the Party: Legacies and Lessons from the RNC 2000, 269 (2015).
2. *Id.* at 54.
3. *Id.* at 90.
4. *Id.* at 150.
5. *Id.* at 205.
6. *Id.* at 206.
7. Jim Smith, *Shhh…City Trying to Settle Protester Suits*, Philadelphia Daily News, July 5, 2002, at 13.
8. Hermes, *supra* note 1, at 228.

the rights afforded ordinary criminal defendants and, accordingly, shield a police force that operates above the law, while citizens struggle beneath it. Most importantly, the article concludes with a list of suggested reforms to finally bring CPD to heel.

Since the late Justice Scalia's backward-looking majority opinion *Stanford v. Kentucky*,[1] which upheld the death penalty for 16 and 17-year-olds, the Supreme Court has repeatedly widened the distinction between adults and children in Eighth Amendment cases involving criminal sentencing. *Roper v. Simmons*[2] overturned *Stanford* and banned the execution of children; *Graham v. Florida*[3] prohibits a sentence of life without parole for juveniles convicted of non-homicide crimes; *Miller v. Alabama*[4] banned mandatory life without parole sentences for juveniles even for homicide crimes (though judges may still use their discretion to impose that sentence). *Montgomery v. Louisiana*,[5] decided earlier this year, seemed to continue the Court's more lenient treatment of juveniles by declaring that the Eighth Amendment right recognized in *Miller* was substantive, not merely procedural, in nature and therefore must be applied retroactively to juveniles convicted before the *Miller* ruling was made. However, the Court's retroactivity doctrine, especially when it comes to juvenile sentencing, was already dizzyingly complex. In "*Montgomery*'s Messy Trifecta" Daniel A. Berman explains how, far from helping to clarify the rights of juvenile inmates, *Montgomery* only exacerbates the confusion.

In "Warning: Detours and Roadblocks Ahead—the Bumpy Road from Selma to Shelby County" David Gespass argues that, while tremendous progress was made expanding the franchise between the Voting Rights Act of 1965 and the Supreme Court's evisceration of that statute with *Shelby County v. Holder*,[6] the U.S. has never come close to actualizing the statute's true ideals, let alone those of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. After *Shelby County* it will require mass organizing and engagement, especially in local elections, just to recoup gains recently lost by that disastrous decision. *Crashing the Party: Legacy and Lessons from the 2000 RNC*, written by Kris Hermes and reviewed by Sue Udry, chronicles the inspiring activism of demonstrators who, despite tremendous opposition from the local police and judiciary, refused to be cowed into silence during and after the Republican National Convention in Philadelphia. As Udry explains in her review, Hermes's description of how various political and legal strategies were used to protect the demonstrators' rights, including their right to publicly advocate their cause, makes *Crashing the Party* essential reading.

—Nathan Goetting, *Editor-in-Chief*

1. 492 U.S. 361 (1989).
2. 543 U.S. 551 (2005).
3. 560 U.S. 48 (2010).
4. 132 S. Ct. 2455 (2012).
5. 136 S. Ct. 718 (2016).
6. 133 S. Ct. 2612 (2012).

U.S. POSTAL SERVICE STATEMENT OF OWNERSHIP, MANAGEMENT & CIRCULATION (REQUIRED BY 39 U.S.C. 3685)

1. Title of Publication: National Lawyers Guild Review. 2 Publication number: 231 560. 3. Date of filing: October 1, 2016. 4. Issue frequency: quarterly. 5. Number of issues published annually: Four. 6. Annual subscription price: $25. 7. Complete mailing address of known office of publication: National Lawyers Guild Review, 132 Nassau Street, # 922, New York NY 10038. 8. Complete mailing address of the general business offices of the publisher: 132 Nassau Street, # 922, New York NY 10038. 9. Full names and complete mailing address of publisher, editor and managing editor: Publisher: National Lawyers Guild Review, 132 Nassau Street, # 922, New York NY 10038. Editor: Nathan Goetting, 132 Nassau Street, # 922, New York NY 10038. Managing editor: Deborah Willis. 10. Owner: National Lawyers Guild Foundation. 11. Known bondholders, mortgagees, and other security holders owning or holding 1 percent or more of total amount of bonds, mortgages, or other securities: none. 12. For completion by nonprofit organizations authorized to mail at special rates (Section 423.12DMM only): Status has not changed during the preceding 12 months. 13. Publication name: National Lawyers Guild Review. 14. Issue date for circulation data below: Spring 2016. 15. Extent and nature of circulation. Average number of copies of each issue during preceding 12 months. A. Total number of copies (net press run): 470. B. Paid and/or requested circulation (1) Outside county: 468. (2) Paid in-county subscriptions: 2. (3) Sales through dealers and carriers, street vendors, counter sales and other non-USPS paid distribution: 0. (4) Other classes mailed through the USPS: 0. C. Total paid and/or requested circulation: 470. D. Free distribution by mail (samples, complimentary and other free): 0 (1) Outside county: 0. (2) In-county: 0. (3) Other classes mailed: 0. E. Free distribution outside the mail (carriers or other means): 0. F. Total free distribution: 0. G. Total distribution: 470. H. Copies not distributed: 122. I. Total:592. Percent paid and/or requested circulation: 100%. Actual number of copies of single issue published nearest to filing date. A. Total number of copies (net press run): 442. B. Paid and/or requested circulation (1) Outside county: 440. (2) Paid in-county subscriptions: 2 (3) Sales through dealers and carriers, street vendors, counter sales and other non-USPS paid distribution: 0. (4) Other classes mailed through the USPS: 0. C. Total paid and/or requested circulation: 442. D. Free distribution by mail (samples, complimentary and other free): (1) Outside county: 0. (2) In-county: 0. (3) Other classes mailed: 0. E. Free distribution outside the mail (carriers or other means): 0. F. Total free distribution: 0. G. Total distribution: 442. H. Copies not distributed: 158. I. Total: 600. Percent paid and/or requested circulation: 100% 16. This statement of ownership will be printed in the Fall 2015 issue of this publication. 17. I certify that the statements made by me above are correct and complete. Signature and title of editor, publisher, business manager or owner: National Lawyers Guild Foundation, owner, October 1, 2016.

National Lawyers Guild Review
132 Nassau Street, Suite 922
New York, NY 10038

Periodicals
Postage Paid