HOW THE RACE OF A NEIGHBORHOOD CRIMINALIZES THE CITIZENS LIVING WITHIN: A FOCUS ON THE SUPREME COURT AND THE "HIGH CRIME NEIGHBORHOOD"

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PROLOGUE: MY INTRODUCTION TO THE FOURTH AMENDMENT CASES

"Government cannot make us equal; it can only recognize, respect, and protect us as equal before the law."[1]

My whole life I was taught that all men are not created equal. This was beaten into my brain by my loving mother who just wanted me to be safe. You see, this message was part of what most young Black men hear when given "the talk."[2] I remember multiple variations of the talk given to me throughout my early childhood.

However, a variation of the talk was most vividly remembered while taking our dog for a walk around my neighborhood with my mother. At the time, we lived in a suburban area, in a predominantly White neighborhood of Baton Rouge, Louisiana. I remember seeing a squirrel in a neighbor's yard and our feisty rescue terrier taking off after it. Naturally, I gave chase as well, running into the back of our neighbor's yard. Instantly, my mother began to yell "what are you doing!" Me, not thinking I had done anything wrong, justified my actions by answering "getting our dog" with a confused look on my face. After retrieving the dog, my mom went on to speak about how I could not do the same

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[1] Justice Clarence Thomas, the second African American Justice to sit in the U.S. Supreme Court, penned these words while concurring in part. Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 240 (1995).

[2] Utah v. Strieff, 136 S. Ct. 2056, 2070 (2016).

things that my White friends, John, Steven, Bobby, could do because I was Black. White citizens and police often see Black men as, in the words of Jay-Z, "[g]uilty until proven innocent."[3] This is something that Trayvon Martin eventually would lose his life over.[4] Four years later, this talk would hit me differently.

I was eighteen years old and a senior at a majority Black public high school. Because I worked hard throughout my first three years of high school, I had the ultimate privilege of a Louisiana senior student, and that was getting out of school after only half a day. I was allowed to leave school early daily because of the number of credits I earned.

I vividly remember one day in February of 2007. I remember it because I received a driving ticket for speeding in a school zone while being late for school. Because of that incident, my mother justly punished me by taking away my driving privileges for a month. At the time, I was a product of busing—my house was not in walking distance from my school.[5] During my punishment, my grandfather would pick me up when I was dismissed; however, he did not show on this day. Students who were dismissed early had fifteen minutes to leave campus or they would be forced to stay in detention until regular dismissal. After fifteen minutes, I began to walk to my aunt's house; she lived about five miles away. After walking nearly half a mile, a fellow minority classmate, Adrian, saw me and offered me a ride. As I approached his car, I remember him telling me to hurry because the police "be tripping." I remember thinking, why would they "trip" when we had done nothing wrong? Less than thirty seconds later, red and blue lights flashed, and police pulled us over. Soon after the car came to a stop, the police, using a megaphone, ordered both of us to exit the vehicle. Then, we were ordered to place our hands on the hood of the car.

The officers informed us that we were leaving from the direction of the (majority Black) school, and they noticed Adrian picking me up. The officers stated that they believed we were skipping school. Later, I would learn in my Criminal Procedure class about *Whren v. United States*, a case that explains how motive is not important when an officer makes a stop.[6] I would also learn

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[3] *See* JAY-Z, *Guilty Until Proven Innocent*, *on* THE DYNASTY: ROC LA FAMILIA (Roc-A-Fella Records & Def Jam Recordings 2000); *see also* Greg Evans, *Jay Pharoah Tells Gayle King That Black People In America "Are Guilty Until Proven Innocent"; Comic Was Stopped By LAPD While Jogging*, DEADLINE (June 17, 2020, 6:36 AM), https://deadline.com/2020/06/jay-pharoah-gayle-king-black-people-guilty-until-proven-innocent-lapd-cbs-this-morning-1202961348/ ("[B[lack people in America are made to 'feel like we're guilty until proven innocent.'").

[4] *See generally* Zimmerman v. State, 114 So. 3d 466 (Fla. Dist. Ct. App. 2013) (discussing how Zimmerman asserted self-defense after being charged with the second-degree murder of Trayvon Martin).

[5] In the 1980s and 1990s, East Baton Rouge Parish schools started "busing plans in an attempt to comply with a federal desegregation order." *See* Jess Clark, *In Diverse East Baton Rouge, An Affluent White Area Seeks Its Own City, School District*, NEW ORLEANS PUB. RADIO (Oct. 11, 2019), https://www.wwno.org/post/diverse-east-baton-rouge-affluent-white-area-seeks-its-own-city-school-district.

[6] *See* Whren v. United States, 517 U.S. 806, 813 (1996) (explaining that officers' subjective

through *Illinois v. Wardlow*, that police could create reasonable suspicion out of almost anything, including running after seeing cops.[7] Soon after, the officers demanded that we remove everything in our pockets as they proceeded to pat us down. The Supreme Court, in *Terry v. Ohio*, manufactured this tool that allows officers to conduct these searches with any amount of reasonable suspicion.[8]

When the officers stated their belief that we were skipping, I informed them that we were seniors and only attended school for half days. We also provided them with our IDs and informed them that we were over the age of eighteen, which meant that even if we did wish to skip school, we could do so without breaking the law.[9] They answered, "well, we're just going to call the school and be sure." Confused, I picked up my cellphone while lying on the car's hood, in an attempt to call my mother. Instantly, one of the officers scolded me for making a sudden movement.

Everything I was told from "the talk" went out of the window.[10] Now, I was infuriated. Here I was, embarrassed on the side of the road, while other classmates and peers drove past us. I was spread out with my pockets emptied; while the police fondled and yelled at me for going after my own phone! There isn't enough emphasis I can add on these pages to communicate my feelings in that moment and yet I try. Then, I verbally "went off" on these officers. I told them how I felt; and that they were being "assholes" for no reason. The moment my friend and I showed our IDs, we dispelled their suspicion about any crimes; thus, the moment we disproved the officers' theory, we had a right to be released. Adrian told me, "chill out, we're good." However, my friend's attempt to calm me down proved unsuccessful. I continued my verbal assaults and asked if I was going to get shot for playing with my phone, which they could clearly see, and had already handled.

I still remember the look on one of the officer's face. He knew I was right. From that point on, he did not say another word and did not attempt to restrict my words or hand motions because he knew I was justified. However, it was not until his partner received clearance from the school that he would let us go. After a short time, we were released with no apologies since the officers were "just doing their jobs."

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intentions do not play a role in a probable cause analysis).

[7] *See* Illinois v. Wardlow, 528 U.S. 119, 124–25 (2000) (finding that Officer Nolan was justified in conducting a pat-down search for weapons when Wardlow fled upon seeing several police cars in a Chicago area known for narcotics trafficking).

[8] When an officer reasonably believes that criminal activity is "afoot" and that the person(s) with whom he is dealing may be armed and "presently dangerous," he is entitled, for the protection of himself and others around, to conduct a "carefully limited search." *See* Terry v. Ohio, 392 U.S. 1, 30 (1968).

[9] LA. REV. STAT. § 17:221 (2011).

[10] The author relates his personal experience with "the talk" and his encounter with police. *See, e.g., Strieff*, 136 S. Ct. at 2070 (discussing "the talk" Black and Brown parents give their children).

My mom used the "the talk" to adequately prepare me for the injustices I would experience just because I am a Black man.[11] However, there is no talk that could prepare me for the trauma these police dealings would have on me almost fifteen years later.[12] Even more alarming is that, even after six years as a veteran cop myself, these traumas continue to exist for me.

I. INTRODUCTION

The Supreme Court has, through three cases, ruled that the way the officers acted towards me that day during high school was not unconstitutional. The cases are *Whren v. U.S.*, *Illinois v. Wardlow*, and *Terry v. Ohio*. One of the most obvious similarities between the three cases mentioned is the fact that each case centers around the Fourth Amendment. The Fourth Amendment states that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[13]

One of the least apparent similarities among these three cases is how the impact of these rulings have often resulted in the disappearance of the need for probable cause, as required by the Fourth Amendment, in Black neighborhoods.

The Supreme Court has ruled that, when investigating certain activities in "high crime neighborhoods," police do not need the "probable cause" that they would for activities that happen outside of those areas.[14] However, one does not need data to recognize that these "high crime neighborhoods" are often the areas that have an increased population of Black and brown people.[15]

Beginning with the fugitive slave laws, this article will focus on how the Supreme Court has battled with police, probable cause, and Black neighborhoods. It also takes a look at how the standard used in policing changes from neighborhoods of color versus White neighborhoods, with a view on the racial impact of *Terry v. Ohio*, *Whren v. United States*, and *Illinois v. Wardlow.*

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[11] *Id.*

[12] *See generally* Taylor Robinson, *Examining the Trauma Related Health Effects of Police Behavior on Black Communities*, ST. LOUIS UNIV., https://www.slu.edu/pre-college-access-trio/trio-program/mcnair-scholars-program/pdfs/journal-articles/taylorrobinson.pdf (last visited Dec. 28, 2020) (discussing the ways that police violence and over-policing in predominantly Black, low-income communities impacts trauma related health outcomes, such as depression and PTSD, among individuals in those populations).

[13] U.S. CONST. amend. IV.

[14] *See Terry*, 392 U.S. at 28 (discussing that an officer can dispel his reasonable belief that criminal activity is afoot by conducting a limited search of the defendant's outer clothing).

[15] Reshaad Shirazi, *It's High Time to Dump the High Crime Area Factor*, 21 BERKELEY J. CRIM. L. 76, 86 (2016).

Note, this paper uses the terms "high drug area," "high crime area," and "high crime neighborhood" interchangeably.

II. FOURTH AMENDMENT ANALYSIS: FROM THE FUGITIVE SLAVE ACTS TO SUPREME COURT CASES

A. THE FREE NEGRO AND THE FUGITIVE SLAVE ACT

To get a historical view of how policing is done differently in Black versus White areas, we must go back to the enactment of the Fugitive Slave Acts of 1793[16] and 1850.[17] These acts provided a procedure for state and local governments and slave owners to pay law enforcement agents to locate any fugitive from justice or "labor" (slavery) and have them brought back to the fleeing state if found in another state.[18] Essentially, if a slave were to run away to a different state for freedom and were to be located by one of these agents, said agents had the authority, by Congress, to arrest the slaves and bring them back to their owners.

From a pure property standpoint, these two acts make sense. For example, if one's cattle were to escape, one would want to be able to hire people to bring the cattle back no matter where they ran off to simply by virtue of the cattle being one's property. However, these were not cattle or domesticated beasts; these were human beings attempting to escape a life where they were unjustly made the property of another human being. Secondly, the way the acts were implemented resulted in the "arrest" and capture of several free Blacks who were not runaway slaves.[19] The result then being that these once free Blacks were then forced back into a life of slavery.[20]

i. The case of Solomon Northup

One of the most famous cases is that of Solomon Northup,[21] who has become the center piece of several written works and multiple Academy Award winning films including "12 Years a Slave."[22]

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[16] Fugitive Slave Act of 1793, ch. 7, 1 Stat. 302 (1793) [hereinafter Fugitive Slave Act of 1793].
[17] Fugitive Slave Act of 1850, ch. 60, 9 Stat 462 (1850) [hereinafter Fugitive Slave Act of 1850].
[18] *See* Fugitive Slave Act of 1793.
[19] CAROL WILSON, FREEDOM AT RISK: THE KIDNAPPING OF FREE BLACKS IN AMERICA, 1780-1865, 17 (1994) ("Slavery was supported by state laws, by the federal fugitive slave laws of 1793 and 1850.").
[20] *See id* ("At the root of the kidnapping of free blacks was the legality of slavery itself."); *see also* 1 THE AFRICAN OBSERVER: A MONTHLY JOURNAL, CONTAINING ESSAYS AND DOCUMENTS ILLUSTRATIVE OF THE GENERAL CHARACTER, AND MORAL AND POLITICAL EFFECTS, OF NEGRO SLAVERY (Enoch Lewis, ed.) 97, 103 (1827) ("Where a traffic in slaves is thus actively carried on, and sanctioned by existing laws, those colored persons who are legally free, must necessarily hold their freedom by a very precarious tenure....").
[21] Rachel Cole et al., *Solomon Northup*, ENCYC. BRITANNICA (July 6, 2020), https://www.britannica.com/biography/Solomon-Northup.
[22] Patricia Bauer, *12 Years a Slave*, ENCYC. BRITANNICA (Dec. 17, 2018),

Northup was a free-born Black musician from New York.[23] In March 1841, a circus offered him a job playing music in Washington, D.C.[24] Upon his arrival in D.C., Northup was drugged and kidnapped.[25] When he woke up, he was shackled and on his way to being traded as a slave in New Orleans, Louisiana.[26] He would go on to spend twelve years working in a plantation as a slave.[27] He was enslaved until he was able to have an abolitionist from Canada send letters back home and get the Governor of New York involved.[28] With the help of politicians, after several months, Northup was able to regain his freedom.[29] Even though Northup's experience became one of the most infamous cases, these actions by fugitive slave catchers were not singular.[30]

The law enforcement agents who kidnapped and enslaved Northup faced charges.[31] However, after years of litigation, all the charges were dropped.[32] This was one of the earliest and well-known examples of police getting away with wrongdoings. It was the case then, and it is still the case today, that even when an officer is accused or caught engaging in illegal behavior, more often than not, that officer will not be held liable or convicted. This continues to haunt Black citizens today.

ii. The case of Margaret Morgan

One must also mention the story of Margaret Morgan when speaking of the injustices that occurred because of Congress' implementation of the Fugitive Slave Acts. After the first Fugitive Slave Act passed, Pennsylvania, then a free state, did its best to fight back against these unjust laws. It enacted a law in March of 1826 which imposed hard labor of seven to twenty-one years for anyone who:

> [S]hall by force and violence, take and carry away, or shall, by fraud or false pretense, attempt to take, carry away or seduce, any negro or mulatto, from any part of the commonwealth, with a design or intention of selling and disposing of, or keeping or detaining, such negro or mulatto, as a slave or servant for life, or for any other term whatsoever such person, and all persons aiding and abetting him, shall, on

https://www.britannica.com/topic/12-Years-a-Slave.

[23] Cole et al., *supra* note 21.

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] Cole et. al., *supra* note 21.

[30] *Id.*

[31] *Id.*

[32] *Id.*

conviction thereof.[33]

Ms. Morgan was a slave, owned by Margaret Ashmore, in Maryland.[34] In 1832, Ms. Morgan escaped Maryland.[35] In 1837, Ms. Ashmore hired Edward Prigg, a slave catcher, to locate Ms. Morgan.[36] When Ms. Morgan was found, she was living in Pennsylvania with her children who had been born as free persons in Pennsylvania.[37] Prigg captured and kidnaped Morgan and her children and took them back to Maryland.[38] This kidnapping, although in line with the Fugitive Slave Act, was clearly a violation of Pennsylvania's state law. In addition to the injustices perpetrated against Ms. Morgan, the worst injustice was committed against Morgan's free children who were forced into slavery.[39]

Charges were eventually brought against Prigg for his violation of the Pennsylvania law.[40] Prigg was convicted of those violations and he appealed to the U.S. Supreme Court, where his convictions were reversed under the Supremacy Clause.[41] However, Priggs' violation of Pennsylvania law, and subsequent indictment, led to the Supreme Court's ruling in favor of Prigg, thus Ms. Morgan and her free children returned to a life of slavery.[42] The Fugitive Slave Acts helped and allowed slave agents to capture Black people without a warrant or probable cause since a Black persons' only possible "guilt" was the mere fact of existing as a Black person in the U.S.

Slave agents could approach Black people, even when they were moving in free spaces, and accuse Black persons of being run-away slaves. No parallel law at the time threatened White existence in the same way Blacks were being persecuted for the color of their skin. The heinous nature of these acts could even force Whites who were against the implementation of slavery to engage in such capture of free Blacks if instructed to do so by a federal agent.[43] It was unlike anything a civilized society should ever be.

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[33] *See generally* Prigg v. Commonwealth of Pennsylvania, 41 U.S. 539, 539 (1842 (declaring a Pennsylvania statute, prohibiting the removal of colored persons from the state to enslave them, unconstitutional).
[34] *Id.*
[35] *Id.*
[36] *Id.* at 556.
[37] *Id.* at 539.
[38] *Id.*
[39] *See* Margaret Pagan, *The liberation of Margaret Morgan*, BALT. SUN (Feb. 21, 1991), https://www.baltimoresun.com/news/bs-xpm-1991-02-21-1991052216-story.html (discussing the abduction of Margaret Morgan and her children and their return to bondage.).
[40] *Id.* ("Under these laws, York County indicted Prigg.").
[41] *Id.*
[42] *Id.*
[43] *See* Fugitive Slave Act of 1850.

B. THE *TERRY* STOP AND ITS EFFECTS ON MINORITY COMMUNITIES

Second, we take a look at *Terry v. Ohio*. *Terry* is probably one of the most notorious cases from the three cases mentioned in this article. This is because this case birthed the "*Terry* Stop," another name for the infamous "stop and frisk."[44]

On Halloween 1963, Cleveland Police Detective, Martin McFadden, was making plain clothed patrols in downtown Cleveland.[45] McFadden saw two Black men, John Terry and Richard Chilton, standing on the corner of Huron Road and Euclid Avenue.[46] McFadden, who could not say or describe what he perceived, simply stated that something "didn't look right" so he began to watch Terry and Chilton.[47] McFadden stated he observed one man separate himself from the other and walk toward the window of a store.[48] Then, the man looked in the window, walked past the store, then turned around and looked into the store again, and then rejoined the other man.[49] After he regrouped with the other man and engaged in a brief conversation, the other man engaged in the same behaviors.[50] McFadden stated that these same events took place around five or six times a piece.[51] Eventually, a third man joined in a conversation with Terry and Chilton before walking away.[52] After ten to twelve minutes, the two men began to walk off together, eventually meeting with the third man again.[53]

McFadden stated he believed the pair were casing the store for a robbery.[54] Also, McFadden said that he felt as though it was his duty, as a police officer, to investigate further, so he approached the three men.[55] He stated that he feared the two men may have a gun.[56] There are many issues presented with these facts. One notable one is how McFadden testified to being an "expert at identifying shoplifters and pickpockets."[57] Surprise, McFadden had never apprehended a robber.[58] Without expertise in robberies or any information leading him to believe criminal activity was afoot, how could McFadden have come to the conclusion that the suspects were about to engage in a robbery? Did I mention that McFadden also testified that nothing about the situation would make a reasonable man believe Terry and Chilton had a gun? At this point,

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[44] *Terry*, 392 U.S. at 10.
[45] *Id.* at 5.
[46] *Id.*
[47] *Id.*
[48] *Id.* at 6.
[49] *Id.*
[50] *Terry*, 392 U.S. at 6.
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Terry*, 392 U.S. at 6.
[57] Lewis Katz, Terry v. Ohio at Thirty-Five: A Revisionist View, 74 MISS. L.J. 423, 490 (2004).
[58] *Id*.

McFadden's knowledge about the situation was limited to only what he observed.[59] McFadden was not familiar with any of the three individuals by name or appearance, and he did not receive any information regarding these men from any other source. Therefore, McFadden relied on a "hunch."[60]

After engaging the three men in questioning, McFadden eventually grabbed Terry, forcing him to face the other two men.[61] McFadden then proceeded to perform a pat down on the outside of Terry's coat where he felt a "gun." McFadden arrested Terry for illegally carrying of a firearm.[62]

This case would eventually reach the U.S. Supreme Court, which ruled that all of McFadden's actions were proper even without a lick of probably cause. All he had was his "hunch" and it was enough to pass constitutional muster.[63] The Court came to the conclusion that in such instances, probable cause is not needed. To justify these searches, "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."[64]

This case moved on to function as an outline for police officers to follow when conducting warrantless searches of persons without probable cause. Not formally mentioned, yet important to note, part of the outline provided to police was the use of the term "high crime area" when describing such "specific and articulable facts" to warrant such intrusion.[65]

On the surface it appears as though the Supreme Court may have gotten it right in *Terry*. We have a detective with over thirty years on the job and who was known for his ability to catch thieves.[66] He observes a group of men engaging in suspicious behavior and believes that they may be preparing to commit a robbery.[67] Further, he believes they may have hidden guns and may be dangerous.[68] This brave officer, who is outnumbered, engages these men and with a quick search finds them hiding two guns. Thus, the cop is able to bring these men to jail before they can terrorize and rob citizens inside the store. If this officer's "hunch" got it "right" this time, then the Supreme Court should honor that, right? Wrong.

Often it is not the individual ruling of a case that creates the problem, but rather the precedent that the case sets for police to engage in. Such precedent

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[59] *Terry*, 392 U.S. at 7.
[60] *See id.* at 7, 27 (citation omitted) ("Whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.").
[61] *Id.* at 7.
[62] *Id.*
[63] *Id.* at 30.
[64] *Id.* at 21.
[65] Katz, *supra* note 57, at 490.
[66] *Terry*, 392 U.S. at 5.
[67] *Id.* at 6.
[68] *Id.*

may create situations where officers act improperly in the future with no real repercussions.

Unfortunately, with this Supreme Court ruling, between 2004 and 2012, the New York Police Department was able to justify conducting over 4.4 million stops.[69] Out of those 4.4 million stops, only 12% resulted in either an arrest or summons. This means that 88% of the time, (3.87 million), the officers' "hunch"—simply got it wrong.[70] Importantly, what these numbers would suggest is that using *Terry* stops is "unreasonable" when considering the gravity of the invasion versus the probability of getting it right, and thus against the Fourth Amendment.

C. *WHREN* AND THE MOTIVE OF POLICE ENCOUNTERS

We now move to *Whren v. United States*. This case introduces us to motive being a factor for police when conducting stops. Although the Supreme Court first mentioned the term "high-crime area" as a contributing factor for reasonable suspicion in *Adam v. Williams*, this is the first case where we take a deeper look into those words.[71]

In June of 1993, plainclothes vice-squad officers were patrolling a "high drug area" in Washington, D.C., in an unmarked vehicle.[72] The officers passed a vehicle with "youthful occupants" who were stopped at a stop sign for more than twenty seconds.[73] This aroused the officers' suspicions and led the officers to make a U-turn to further observe the vehicle.[74] Then, the driver turned right without signaling and sped off.[75] The officers followed the vehicle until it stopped, along with other vehicles, at a red-light.[76] It was then that an officer stepped out of the patrol vehicle, approached the driver, and instructed the driver to put the vehicle in park, thus engaging in a traffic stop.[77] While engaged in the traffic stop, the officer observed crack cocaine in the passenger's hand.[78] Both the driver and passenger were arrested for narcotics possession.[79]

Note, at the time, D.C. police enforced "regulations which permit plainclothes officers in unmarked vehicles to enforce traffic laws 'only in the case of a violation that is so grave as to pose an *immediate threat* to the safety of others.'"[80] In particular, this stop is a clear violation of such policy.

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[69] Floyd v. City of New York, 959 F. Supp. 2d 540, 558 (S.D.N.Y. 2013).
[70] *Id*. at 558–59.
[71] Adams v. Williams, 407 U.S. 143, 144 (1972).
[72] *Whren*, 517 U.S. at 808.
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Whren*, 517 U.S. at 809.
[79] *Id.*
[80] *Id.* at 815.

On appeal, one of the major issues brought up was how, due to how strictly vehicles and traffic is regulated, "a police officer will almost invariably be able to catch any given motorist in a technical violation."[81] The Supreme Court never negates this point in its ruling. So here we are, having "Vice" officers in plainclothes whose primary responsibility is to investigate street crimes such as narcotics, illegal firearm transactions, prostitution, and illegal gambling. Yet, these same highly trained and specialized officers continuously engage in traffic stops for nothing more than failing to signal when turning after proceeding from a stop sign. Even the most naïve individuals could recognize that a failure to signal is not the true motive for an officer's decision to stop a vehicle. Rather, the failure to signal was just the window of opportunity needed for these officers to begin the work they are actually trained to do—investigate for drugs and guns.

The attorneys for the defendants argued that probable cause should not be the standard needed to justify such a stop under the Fourth Amendment.[82] Instead, they argued that the standard should be whether a reasonable officer would have made the stop for the traffic reason proclaimed.[83] The reasonable officer standard is not new to the Supreme Court. Just a few years prior, the 1985 Supreme Court case *Tennessee v. Garner*[84] and the 1989 case *Graham v. Connor*[85] concluded that the "reasonable officer" standard was the correct standard when analyzing an officer's use of force. However, in 1996, the Supreme Court rejected such a standard in *Whren*.[86]

Effectively, the Court's ruling allows for officers to engage in traffic stops if they can conclude that some form of civil traffic violation occurred, with no regard for the officer's actual motives for the stop. More than any other case in this analysis, the effects of the *Whren* ruling have left the most impactful and significant "wide-open" door for police to engage in biased and racially motivated encounters. For perspective, a police officer can observe hundreds of traffic violations within a given shift, ranging from recklessly operating a vehicle to one of three taillights being out, and constitutionally only stop the person of color for driving two miles per hour over the speed limit. And if that officer's bias played a role in choosing to stop the Black driver, that would be irrelevant under *Whren*'s precedent which ignores the reasonable officer standard.

Often, proving that such stops are racially motivated may be near impossible; but if you have truly been the victim of such stop, the way I have, there is just simply no doubt in your mind.

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[81] *Id.* at 810.
[82] *Id.*
[83] *Id.*
[84] Tennessee v. Garner, 471 U.S. 1, 3 (1985).
[85] Graham v. Connor, 490 U.S. 386, 388 (1989).
[86] *Whren*, 517 U.S. at 819.

It was this ruling about a failure to signal and traffic stops that became the center point of another infamous police encounter which unfortunately led to the death of my classmate and fellow Prairie View A&M University Alumna, Sandra Bland. Bland was leaving the Historically Black University ("HBCU") when she too was pulled over for failure to signal.[87] After a verbal altercation with the officer, the officer threatened Bland with a taser and took her to jail.[88] Three days later, Bland was found dead in her cell.[89] I am only one of the millions of other Black Americans who can tell their stories of being unjustly targeted by police for some insignificant traffic violation as pretext. Here are two of mine.

As previously mentioned, I served six years as a law enforcement officer in Louisiana.[90] My first job in law enforcement began when I was hired for an agency in Covington, Louisiana, about an hour drive from my hometown of Baton Rouge. For my first month on the job, I had to drive my personal car to and from work, until I received a police unit. At the time, my sister who lived in Mississippi, allowed me to borrow her spare car. The highway I had to drive, I-10, is notorious for drug trafficking. As a result, police use proactive patrols.

One week, while on my way to work, I was pulled over three times. Each time was for an "officer judgment" infraction. The first time, I believed it was a fluke. I was pulled over for "following too close."[91] Louisiana law does not provide a distance for what would be too close, it just says no more than "reasonable."[92] Was I actually driving too close? I am not sure. However, within seconds, I informed the officer of the agency I worked for and he released me without as much as even telling me to correct my driving.

The second time involved the same area and same infraction, but a different officer. This time I started to believe something was up since just the day before I was also pulled over for the same infraction. This time, I knew I was closely observing my distance. Thus, I knew this officer's attempt to say I was "too close" simply could not be true. It started to set in with me. I was a young Black man driving an older vehicle with an out of state license plate. I fit the description for a narcotics trafficker. Yet again, I showed the officer the jacket of the police agency I worked for and I was released. Again, I was never given instructions to correct my driving. The feeling that I was being profiled set in.

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[87] Gabriella Banks & St. John Barned-Smith, *Sandra Bland's mother says lawsuit settlement is 'victory for moms'*, HOUS. CHRON. (Sept. 15 2016, 10:56 PM), https://www.houstonchronicle.com/news/houston-texas/houston/article/Sandra-Bland-s-mother-says-lawsuit-settlement-is-9226234.php.

[88] *Id.*

[89] *Id*. (describing Bland's family's desire for personnel working in the jail at the time of Bland's death to be held accountable).

[90] *See supra* Prologue (discussing a past traumatic encounter with police officers).

[91] LA. REV. STAT. § 32:81(A) (2011) (outlining Louisiana's motor vehicle traffic regulations when following another vehicle on the highway).

[92] *Id.* (stating that a "motor vehicle shall not follow another vehicle more closely than is reasonable and prudent.").

The third time, I was pulled over for something different. The excuse this time? I was "driving too slow."[93] Because of my two previous traffic stops that week, I was cautious and driving slower than usual to ensure that I was not violating the traffic regulation by driving too close to the vehicle in front of me. This time, I was ordered out of my vehicle and the first question the officer asked was, "do you have any weapons?" I paused because everything in me felt offended about what was going on. Here I was, dealing with being stopped for a third time in one week, and yet again for another made up excuse, and the first thing I am asked is if I have a weapon? My internal monologue was screaming, "YES! YES, I DO!" I then expressed that I did have a firearm issued to me by the State of Louisiana to engage in the exact same duties as this officer. He then proceeded to ask me about my law enforcement credentials to which I explained to him that I was a new hire and had not received them yet. Then he questioned me some more about my boss until he eventually let me go. Once again, the officer left without reprimanding my driving.

A few hours after arriving at the department, my boss pulled me into his office. Without any explanation, he informed me that he would be providing me with a police unit to drive back and forth to work by the end of the day. I knew then that he was aware of the incidents during those drives; my boss knew that I had been pulled over. Yet, I also knew he did not instruct those officers to stop their questionable behavior, but instead, he thought he was fixing the problem by changing me and not them. Even though I was grateful for the gesture, I knew this would continue to allow those officers to engage in the same profiling behavior with others, it just allowed them to avoid me.

Years later, I was off duty and traveled to Texas to visit an uncle who had recently suffered a stroke. On my way back, again, I went on I-10 into Louisiana from Texas with the same Mississippi license plate. An unmarked vehicle pulled behind me. Although unmarked, I could tell it was a police K9 unit. K9 units are often used on interstates when police are attempting to do drug detections, especially in drug trafficking. I proceeded to slow down and change lanes as to get out of its way. This officer continued to follow me for over five miles. The entire time, I made sure to keep a good distance between myself and the U-Haul in front of me. Just as we were exiting the city limits, the officer activated his lights to pull me over.

When he approached me, he informed me that he had stopped me because I was following the U-Haul too closely. The U-Haul was in the lane I changed to after passing the officer. This means that this officer got behind and followed me before having any "probable cause." And again, I knew better than to follow too close because an officer was already behind me. I already knew that this was yet another ulterior motive stop. For what feels like too many times in my

[93] LA. REV. STAT. § 32:73(B) (2011) (outlining Louisiana's motor vehicle prohibitions on stopping the flow of traffic by traveling at the same speed as the vehicle in the right lane of a multiple-lane highway).

life, I again provided him with both my driver's license and my law enforcement credentials. The officer then made a dismissive comment and asked why I gave him my law enforcement credential.

He then began to interrogate me and ask questions that I knew to be "drug courier" questions. His last question to me was, "are there any guns in the car?" I knew this was the question he would use to get inside of my vehicle. If I answered yes, I knew he would then use that as an opportunity to (1) have me exit the car, (2) allow him inside my vehicle to "retrieve" it, and (3) while retrieving it see what else he could observe "incidentally." Here I was, a certified veteran officer who always tried to follow the rules, being treated like a notorious drug dealer. Words cannot explain the feeling of knowing you have done everything right while still being treated like the scum of the earth by the people you trust. My career as a good guy, on the right side of law, had betrayed me.

For personal reasons, early on in my career, I stopped carrying off duty. When I truthfully answered "no," to having a gun in the vehicle, the officer used that as an opportunity to berate me. He made statements such as, "what kind of cop doesn't carry a gun?" I was finally released after no further incident. Again, without advising me to change my driving behavior.

The next day I had a blow-up while at work, which led to my conversation with my then Captain. When he asked me what was wrong, I explained to him the situation that had occurred over the past weekend. I then got emotional and finally told him, "with all these racist things going on, I am not sure if this career field is right for me." All he could do was get quiet and apologize for that officer's actions. My Captain was an elderly White man in his sixties with a minority wife and mixed children. Although his apology was sincere, I knew there was no way he could offer a solution to prevent what happened to me and others at the hands of law enforcement.

One thing I know for sure, each time I was stopped, whatever excuse these officers might have provided me as the probable cause for the stops, was not their real motive. It is the very precedent laid out by the Supreme Court in *Whren* that gives officers the green light to conduct themselves in that manner.

D. *WARDLOW* AND THE FATAL MISTAKE OF LOOKING AT THE POLICE

The last Supreme Court case we will take a deeper look at is *Illinois v. Wardlow*. Although not as well-known as *Terry*, *Wardlow* gives police another tool to police minorities—especially those who reside in a "high drug" or "high crime" neighborhood. In *Terry*, the Court delivered an 8-1 decision.[94] In *Whren*, the Court decided unanimously.[95] However, in *Wardlow*, the Court was split in a close 5-4.[96] I believe this indicates the gravity of the matter before the

[94] *Terry*, 392 U.S. at 35 (Douglas, J., dissenting).
[95] *Whren*, 517 U.S. at 819.
[96] *Wardlow*, 528 U.S. at 121.

Court in this case, and the important considerations the Justices faced in deciding whether they were willing to set this precedent.

In September of 1995, "special operations" officers with the Chicago Police Department were working in a four-vehicle caravan in an area known "for heavy narcotics trafficking." These officers were attempting to investigate drug transactions.[97] Officer Nolan observed Wardlow standing next to a building holding a bag.[98] Officer Nolan watched as Wardlow looked in the direction of the officers and then fled.[99] Officer Nolan chased and cornered Wardlow.[100] Believing he had reasonable suspicion to justify a *Terry* stop, Officer Nolan conducted a stop and frisk.[101] During the pat down, Officer Nolan felt something in the shape of a firearm in Wardlow's bag.[102] When Officer Nolan opened the bag, he found a loaded .38 caliber handgun.[103] Wardlow was placed under arrest for unlawful possession of a firearm by a convicted felon.[104]

The issue before the Court was whether sudden flight "in a high crime" area creates reasonable suspicion to justify a *Terry* stop.[105] The factor of "high crime" area became the center focus of this case. The Supreme Court explicitly stated that "officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation."[106] The Court also stated that an officer must gain their reasonable suspicion on "commonsense judgments and inferences about human behavior."[107] Ultimately, the Court decided that the flight, coupled with the high crime area, was sufficient reason to create Officer Nolan's reasonable suspicion.[108]

Justice Scalia once noted that "the wicked flee when no man pursueth."[109] Justice Stevens' dissent in this case gives several reasons why an innocent person would break into a run. Justice Stevens' reasonings include: catching up with a friend a block away, seeking shelter from a storm, getting to a bus stop, resuming one's jog after a rest, avoiding contact with a bully, or simply answering the call of nature–any of which might coincide with the arrival of police in the vicinity.[110]

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[97] *Id.*
[98] *Id.* at 121–22.
[99] *Id.* at 122.
[100] *Id.*
[101] *Id.*
[102] *Wardlow*, 528 U.S. at 122.
[103] *Id.*
[104] *Id.* at 122, 126.
[105] *Id*. at 122.
[106] *Id.* at 124.
[107] *Id.* at 125.
[108] *Wardlow*, 528 U.S. at 137.
[109] California v. Hodari D., 499 U.S. 621, 624 n.1 (1991).
[110] *Wardlow*, 528 U.S. at 128–29.

Justice Stevens goes even further by stating that even if a person runs when they see the police, there are still plenty of innocent reasons why. Reasons to avoid the police may include avoiding being apprehended with the guilty parties, as well as attempting to avoid having to appear as a witness.[111] An officer's sudden appearance may also indicate nearby criminal activity, that can also indicate a substantial element of danger from either the criminal or from the confrontation between the criminal and the police.[112]

Justice Stevens then noted that "minorities and those residing in high crime areas" have their innocent reasons which they may flee upon seeing the police.[113] Justice Stevens indicates that these citizens may fear contact with the police because such dealings in themselves can be dangerous.[114] Also, these minorities are more likely targets of encounters that lead to stops, frisks, searches, and interrogations, making such flight from police neither "aberrant" nor "abnormal."[115]

Justice Stevens criticized Officer Nolan's testimony about not knowing whether his or any other caravan vehicle was marked.[116] Officer Nolan also stated he did not know if any of the other officers were in uniform.[117] Both questions are essential in providing reasons why a person may flee. If all were unmarked and not in uniform, did Wardlow even know this was the police? If he did know they were police, wouldn't the presence of multiple plainclothes police officers acting together indicate some police operation? That could be dangerous and create sufficient reason to flee. Also, if they were not coming for Wardlow, then Wardlow's attempt to avoid the police operation should be desired by the police.

Lastly, Justice Stevens' statement about the fact they were in a high crime neighborhood further discourages the Supreme Court's ultimate decision. Justice Stevens stated:

> The State, along with the majority of the Court, relies as well on the assumption that this flight occurred in a high crime area. Even if that assumption is accurate, it is insufficient because even in a high crime neighborhood unprovoked flight does not invariably lead to reasonable suspicion. On the contrary, because many factors providing innocent motivations for unprovoked flight are concentrated in high crime areas, the character of the neighborhood arguably makes an inference of guilt less appropriate, rather than more so. Like unprovoked flight itself, presence in a high crime neighborhood is a fact

[111] *Id.* at 131.
[112] *Id.*
[113] *Id.* at 132.
[114] *Id.*
[115] *Id.* at 133.
[116] *Wardlow*, 528 U.S. at 138.
[117] *Id.*

> too generic and susceptible to innocent explanation to satisfy the reasonable suspicion inquiry.[118]

Using the arguments for unprovoked flight in a "high crime" area should actually go against the Supreme Court's decision. Yet, the Supreme Court uses it as a reason which would provide officers with the reasonable suspicion needed to engage the individuals in those flights.

Wardlow mirrors the events that lead to the death of Freddie Gray in Baltimore.[119] When apprehended, police found Gray in possession of a switch blade knife, which he was arrested for.[120] Later, the prosecutor would go on to state that the knife was actually legal.[121] Following his arrest, Gray was placed in the rear of a police van.[122] When Gray was removed from the van, he was no longer conscious and was transported to the hospital.[123] At the hospital, the doctors discovered Grey had a broken spine.[124] Seven days later, Gray died in the hospital.[125] One may ask, what was the reason Gray was apprehended? According to Gray's charging documents, it was because Gray "fled unprovoked upon noticing police presence."[126] Such a "reasonable suspicion" to pursue Gray was given to the officers by the Supreme Court's ruling in *Wardlow*. Freddie Gray *was* Wardlow.

Professor Kimberly J. Norwood wrote in an article about her experience speaking to a group of black thirteen-year-old boys in regards to the Michael Brown shooting.[127] Many of the teenage boys stated that they feared the police.[128] When Professor Norwood asked, "[w]hat would you do if a police officer started walking toward you?" they each said they would "turn around and run[.]"[129] None of these Black teenage boys had been in any legal trouble or severe trouble in school but all wished to avoid any contact with officers.[130] Yet, the Supreme Court, with its *Wardlow* decision, gives the police reasonable suspicion to stop individuals who flee if they are in a "high crime area."

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[118] *Id.* at 139.
[119] *Freddie Gray's death in police custody - what we know*, BBC (May 23, 2016), https://www.bbc.com/news/world-us-canada-32400497.
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] BBC, *supra* note 119.
[126] *PDF: Charging documents for Freddie Gray*, BALT. SUN, (Apr. 20, 2015, 3:10 PM), https://www.baltimoresun.com/news/crime/bal-charging-documents-for-freddie-gray-20150420-htmlstory.html.
[127] Kimberly Jade Norwood, *The Far-Reaching Shadow Cast By Ferguson*, 46 WASH. U. J.L. & POL'Y 1, 16 (2014).
[128] *See id*.
[129] *Id.*
[130] *Id.* at 16–17.

Statistics show that these "high crime areas" represent the same neighborhoods that many similarly situated young men have no choice but to live and grow up in.

How could the Supreme Court come to the decisions highlighted above? To answer this question, we will take a further look at the composition and diversity of the current U.S. Supreme Court Justices. Currently, the Supreme Court is made up of three females and six male Justices.[131] There are eight White Justices which includes one Latina Justice, and one Black.[132] The Justices come from Buffalo, N.Y.; South Georgia; Metairie, an affluent suburb of New Orleans, LA; San Francisco, CA; Trenton, N.J.; Bronx, N.Y.; Manhattan, N.Y.; Denver, CO; and Washington D.C..[133] They all have elite educations, the majority from Ivy League schools including four of whom have J.D.s from Harvard, four from Yale, and from Notre Dame–a non-ivy league but highly ranked university.[134] Several of them have multiple Ivy League degrees.[135] With the Justices coming from such elite backgrounds with a lack of diversity, it is easy to see how they would not have the same mentality or experiences as most inner city Black males. Therefore, it is not surprising that these Justices would allow such injustices to become the realities of everyday life for people with different backgrounds. They have essentially criminalized "Black behavior."

E. RACE-BASED IMPACTS

Through caselaw, the Justices lay out a blueprint for police to follow; however, as mentioned earlier, often, this blueprint has a disproportionate effect on minorities and people of color. How the Supreme Court has ruled in cases such as *Terry, Wardlow*, and *Whren*, not only justifies, but encourages, police to act differently when engaging Blacks within specific neighborhoods. *Floyd v. City of New York* provides some statistics when dealing with stops and frisks.

Floyd was based on a 2013 class action in which one of the main arguments raised was that the New York Police Department engaged in practices that went against the Fourteenth Amendment's Equal Protection Clause.[136] This suit accused the NYPD of having practices of racially profiling and treating Blacks and other minorities different than Whites when it came to stops and frisks.[137] NYPD Deputy Inspector, Christopher McCormack, stated that these practices

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131 *Current Members*, SUPREMECOURT.GOV, https://www.supremecourt.gov/about/biographies.aspx (last visited Dec. 28, 2020).
132 *Id.*
133 *Id*.
134 *Id*.; *see also Samuel A. Alito, Jr.*, OYEZ, https://www.oyez.org/justices/samuel_a_alito_jr (last visited Dec. 28, 2020); *Amy Coney Barrett*, OYEZ, https://www.oyez.org/advocates/amy_coney_barrett (last visited Dec. 28, 2020).
135 SUPREMECOURT.GOV, *supra note* 131.
136 *Floyd*, 959 F. Supp. 2d at 556.
137 *Id.*

were about "stopping the right people."[138] Who were these "right people?" Statistics provided by the lawsuit showed that 52% of those stopped were Black, 31% were Hispanic, and only 10% were White.[139] In 2010, New York City's demographics were 23% Black, 29% Hispanic, and 33% White.[140] Of those stopped, weapons were only found on 1% of Blacks, 1.1% of Hispanics, and 1.4% of Whites,[141] while other contraband was only located on 1.8% of Blacks, 1.7% of Hispanics, and 2.3% of Whites.[142] Even without considering race, it is evident that citizens are being subjected to high invasions with a meager return on police locating contraband.

To stop such a high percentage of Blacks, the police must have focused on areas with a higher number of Black citizens than other races. These statistics indicate a difference in the policing of areas with majority Black versus White population. While large cities like New York often brag about their diversity, a quick look at a racial residency map will prove this is usually an illusion.[143] Often times, in these large cities, the neighborhoods within it are still very much segregated.

> The high levels of segregation in inner-city communities are largely involuntary. Their causes stem from 'three interrelated and mutually reinforcing forces in America: high levels of institutionalized discrimination in the real estate and banking industries; high levels of prejudice among whites against blacks as potential neighbors; and discriminatory public policies implemented by whites at all levels of government.'[144]

In *Buchanan v. Warley*, the Supreme Court dealt with statutes preventing Blacks from legally being able to live and buy property in White neighborhoods.[145] Although the Supreme Court ultimately decided that such statutes were against the Fourteenth Amendment, the Court recognized such statutes were essential for the "maintenance of the purity of the races."[146] The Justices were fearful that if they allowed Whites and Blacks to live in the same neighborhoods, White women and Black men would eventually fall in love and procreate, thus eliminating their White "purity." If members of the legislature were

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[138] *Id.* at 604.
[139] *Id.* at 559.
[140] *Id.*
[141] *Id.*
[142] *Floyd*, 959 F. Supp. 2d at 559.
[143] Nate Silver, *The Most Diverse Cities Are Often The Most Segregated*, FIVETHIRTYEIGHT (May 1, 2015, 8:28 AM), https://fivethirtyeight.com/features/the-most-diverse-cities-are-often-the-most-segregated/.
[144] Shirazi, *supra note* 15 at 84.
[145] Buchanan v. Warley, 245 U.S. 60, 70 (1917).
[146] *Id.* at 81.

fearful of this, it is apparent that lay White men would also be equally as scared. This in turn led to discrimination in the real estate and banking industries. Although the Fair Housing Act of 1968 attempted to alleviate some of those issues, their residual effects continue today.[147]

"High crime" neighborhoods were also molded by two Black migrations.[148] Blacks migrated from the rural south to inner cities and abandoned inner-city neighborhoods by new middle-class Blacks for more prosperous suburbs.[149] These trends merged the poorest Black people together.[150] "Without an effective political voice to address the problems of poverty, limited educational opportunity, single-parent families, [and] unemployment[,]" higher crime rates arose.[151]

Higher crime rates result in higher police presence in these neighborhoods. Higher police presence then results in higher arrest rates.[152] High crime and arrest rates are then used by the police to describe such neighborhoods as "high crime areas." Simultaneously, the Supreme Court, through its decisions, has left minorities in these "high crime neighborhoods" with their Fourth Amendment rights reduced in comparison to people outside of these areas. These practices often lead to tensions between police and members of the community. These tensions have a deadly impact on Black and other minority communities.

One of the biggest obstacles that minorities face in addressing these issues is the rarity with which they can seek remedies. The type of class action suit used in *Floyd* is rare. For a case to make it to the Supreme Court, a sufficiently questionable arrest or death must occur. The problem with this, however, is that such an arrest often casts the overshadowing indication that the citizen whose rights may have been violated committed some sort of unlawful act anyways, and therefore, they should not be entitled to relief. This practice also ignores those times when a citizen's rights are violated without an arrest. Are those situations not worth the widespread change?

In *Utah v. Strieff*'s dissent, Justice Sotomayor, the only double minority in the history of the U. S. Supreme Court, wrote one of the most impactful statements in the history of the Supreme Court dealing with the Fourth and Fifth Amendments and racial minorities:

> [F]ew may realize how degrading a stop can be when the officer is looking for more. This Court has allowed an officer to stop you for whatever reason he wants—so long as he can point to a pretextual justification after the fact. *Whren* . . . [t]hat justification must provide specific reasons why the officer suspected you were breaking the

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147 *See generally* 42 U.S.C. § 3604 (enforcing the end of discrimination in the sale or rental of housing on the basis of race, color, religion, sex, familial status, or national origin).
148 Shirazi, *supra note* 15 at 83.
149 *Id.*
150 *Id.*
151 *Id.* at 84.
152 *Id.* at 86–88.

> law, *Terry* . . . but it may factor in your ethnicity, *United States v. Brignoni–Ponce* . . . where you live, *Adams v. Williams* . . . what you were wearing, *United States v. Sokolow* . . . and how you behaved, *Illinois v.* Wardlow . . . [t]he officer does not even need to know which law you might have broken so long as he can later point to any possible infraction—even one that is minor, unrelated, or ambiguous. *Devenpeck v. Alford* . . . [t]he indignity of the stop is not limited to an officer telling you that you look like a criminal . . . [t]he officer may next ask for your "consent" to inspect your bag or purse without telling you that you can decline. *See Florida v. Bostick* . . . [r]egardless of your answer, he may order you to stand 'helpless, perhaps facing a wall with [your] hands raised.' *Terry* . . . [i]f the officer thinks you might be dangerous, he may then "frisk" you for weapons. . . . [a]s onlookers pass by, the officer may . . . 'feel with sensitive fingers every portion of [your] body. A thorough search [may] be made of [your] arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet.' . . . [t]he officer's control over you does not end with the stop. If the officer chooses, he may handcuff you and take you to jail for doing nothing more than speeding, jaywalking, or 'driving [your] pickup truck … with [your] 3–year–old son and 5–year–old daughter … without [your] seatbelt fastened.' . . . At the jail, he can fingerprint you, swab DNA from the inside of your mouth, and force you to 'shower with a delousing agent' while you 'lift [your] tongue, hold out [your] arms, turn around, and lift [your] genitals.' . . . [e]ven if you are innocent, you will now join the 65 million Americans with an arrest record and experience the 'civil death' of discrimination by employers, landlords, and whoever else conducts a background check . . . [a]nd, of course, if you fail to pay bail or appear for court, a judge will issue a warrant to render you 'arrestable on sight' in the future . . . [b]ut it is no secret that people of color are disproportionate victims of this type of scrutiny.[153]

III. CONCLUSION

Now that we have gone over these cases' racial impact, where do we go from here? There's a lot of work to be done for us as citizens to fix some of the issues the Court has caused. For starters, we need to change the outlook of the Supreme Court. It seems very logical to have the smartest and the brightest in these positions. Unfortunately, the way our educational system is set up, those "smartest and brightest" often come from similarly situated backgrounds. A few Justices from outside of the Ivy League could bring a different perspective to the Court. To get such a Justice, we need a President that believes diversity

[153] *Strieff*, 136 U.S. at 2069–70.

is a benefit. Additionally, citizens should also bring the same passion they bring to the presidential elections to the local elections. The district attorneys, state legislators, local council members, and sheriffs have just as much impact on these law enforcement practices as the Supreme Court does. Lastly, the demographics of law enforcement officers should match the demographics of the citizens they police in order to increase the likelihood that the officers understand the behaviors of the citizens they engage with.

Justice Scalia once said that "[i]n the eyes of government, we are just one race here. It is American."[154] Although Justice Scalia was a very intelligent man, to believe that the government could pretend to be color blind is foolish. In the words of scholar and my dear Professor, Donald Tibbs: "Colorblindness does not exist. It is a racial myth. As such, many people of color find colorblind ideology to be offensive; we would rather you be race conscious."[155]

[154] *Adarand Constructors, Inc.*, 515 U.S. at 239.

[155] Dr. Donald Tibbs, Seminar: Race and the Law at St. Thomas University School of Law (Nov. 5, 2019).