

## “I Can’t Breathe!”: A Century Old Call for Justice

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I have to begin by thanking Valerie Weiss and the *Seton Hall Law Review* for inviting me to serve as the keynote speaker for this critically important Symposium on “Policing the Police and the Community.” It is an honor to address lawyers, law students, law enforcement professionals, and other advocates who, by spending their time at this Symposium and doing the hard work of engaging with these complex issues, exemplify the best that our profession has to offer.

“I Can’t Breathe.”<sup>1</sup>

“Hands Up, Don’t Shoot.”<sup>2</sup>

“Black Lives Matter.”<sup>3</sup>

These now ubiquitous chants, hashtags, and mantras are the contemporary rallying cries of those who have been moved to action

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<sup>1</sup> Oliver Laughland et al., *‘We Can’t Breathe’: Eric Garner’s Last Words Become Protesters’ Rallying Cry*, THEGUARDIAN (Dec. 4, 2014), <http://www.theguardian.com/us-news/2014/dec/04/we-cant-breathe-eric-garner-protesters-chant-last-words>; Tina Susman & Vera Haller, *Demonstrators Echo Eric Garner’s ‘I Can’t Breathe’ Cry Again, a Year After His Death*, L.A. TIMES (July 18, 2015), <http://www.latimes.com/nation/la-na-garner-justice-20150719-story.html>.

<sup>2</sup> Cheryl Corley, *Whether History or Hype, ‘Hands Up, Don’t Shoot’ Endures*, NPR (Aug. 9, 2015, 11:16 PM), <http://www.npr.org/2015/08/08/430411141/whether-history-or-hype-hands-up-dont-shoot-endures>; Emanuella Grinberg, *Why ‘Hands Up, Don’t Shoot’ Resonates Regardless of Evidence*, CNN (Jan. 11, 2015, 9:43 AM), [www.cnn.com/2015/01/10/us/ferguson-evidence-hands-up/](http://www.cnn.com/2015/01/10/us/ferguson-evidence-hands-up/).

<sup>3</sup> See Jessica Guynn, *Meet the Woman Who Coined ‘Black Lives Matter,’* USA TODAY (Mar. 4, 2015, 4:16 PM), <http://www.usatoday.com/story/tech/2015/03/04/alicia-garza-black-lives-matter/24341593/>; *About the Black Lives Matter Network*, BLACKLIVESMATTER, <http://blacklivesmatter.com/about> (last visited Feb. 8, 2016).

by the police killings of Eric Garner,<sup>4</sup> Michael Brown,<sup>5</sup> Tamir Rice,<sup>6</sup> Akai Gurley,<sup>7</sup> Walter Scott,<sup>8</sup> Freddie Gray,<sup>9</sup> and far too many others to name.<sup>10</sup> However, these powerful phrases not only stand as succinct and eloquent expressions of the current crisis of racial bias in criminal justice, but also effectively capture the historical struggle for racial justice and serve as a call to action.

Thus, “I Can’t Breathe” speaks to the poignant frailty of human life and to the way in which violence intended to silence has the capacity to embolden.

“Hands Up, Don’t Shoot” reminds us of the terrifying human capacity to devalue and destroy life and that a gesture of surrender can become a symbol of strength.

And, of course, “Black Lives Matter” is a reminder that we have much work yet to do before we can declare victory in the fight for racial justice, criminal justice, and civil rights.

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<sup>4</sup> “I Can’t Breathe”: Eric Garner Put in Chokehold by NYPD—Video, THEGUARDIAN, (Dec. 14, 2014, 2:46 PM), <http://www.theguardian.com/us-news/video/2014/dec/04/i-cant-breathe-eric-garner-chokehold-death-video> [hereinafter Eric Garner video].

<sup>5</sup> Julie Bosman & Emma G. Fitzsimmons, *Grief and Protests Follow Shooting of a Teenager*, N.Y. TIMES (Aug. 10, 2014), [http://www.nytimes.com/2014/08/11/us/police-say-mike-brown-was-killed-after-struggle-for-gun.html?mtrref=undefined&assetType=nyt\\_now&r=1](http://www.nytimes.com/2014/08/11/us/police-say-mike-brown-was-killed-after-struggle-for-gun.html?mtrref=undefined&assetType=nyt_now&r=1).

<sup>6</sup> Ryllie Danylko, *Cleveland Police Officer Fatally Shoots 12-Year-Old Tamir Rice: The Big Story*, CLEVELAND.COM (Nov. 24, 2014, 5:32 PM), [http://www.cleveland.com/metro/index.ssf/2014/11/cleveland\\_police\\_officer\\_fatal.html](http://www.cleveland.com/metro/index.ssf/2014/11/cleveland_police_officer_fatal.html).

<sup>7</sup> Michael Wilson, *Officer’s Errant Shot Kills Unarmed Brooklyn Man*, N.Y. TIMES (Nov. 21, 2014), <http://www.nytimes.com/2014/11/22/nyregion/new-york-police-officer-fatally-shoots-brooklyn-man.html>.

<sup>8</sup> Michael S. Schmidt & Matt Apuzzo, *South Carolina Officer is Charged with Murder of Walter Scott*, N.Y. TIMES (Apr. 7, 2015), <http://www.nytimes.com/2015/04/08/us/south-carolina-officer-is-charged-with-murder-in-black-mans-death.html>.

<sup>9</sup> Colin Campbell, *Man Critically Injured in Videotaped Baltimore Police Encounter*, BALTIMORE SUN (Apr. 14, 2015, 7:55 AM), <http://www.baltimoresun.com/news/maryland/crime/blog/bs-md-ci-gilmor-homes-arrest-20150413-story.html>. See also *Timeline: Freddie Gray’s Arrest, Death and the Aftermath*, BALTIMORE SUN, <http://data.baltimoresun.com/news/freddie-gray/> (last visited Nov. 30, 2015).

<sup>10</sup> Oliver Laughland et al., *US Police Killings Headed for 1,100 This Year, with Black Americans Twice as Likely to Die*, THEGUARDIAN (July 1, 2015), <http://www.theguardian.com/us-news/2015/jul/01/us-police-killings-this-year-black-americans>; Aamer Madhani, *Timeline: Dozens of Unarmed African Americans Killed Since Ferguson*, USA TODAY (Aug. 9, 2015, 4:36 PM), <http://www.usatoday.com/story/news/2015/08/09/timeline-dozens-unarmed-african-americans-killed-since-ferguson/31375795/>; *The Counted: People Killed By Police in the US*, THEGUARDIAN, <http://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database> (last visited Jan. 5, 2016) [hereinafter *The Counted*].

So, today, I’m going to talk about how the recent spate of police killings of African Americans echoes similar crises of the past, how reform advocates in the early 1900s responded to such tragedies and achieved meaningful reforms, and how the fight for racial fairness in criminal justice is far from over but it can—and must—be won.

#### I CAN’T BREATHE

Eleven times. On July 17, 2014, Eric Garner repeated the words “I Can’t Breathe” eleven times before he was choked to death by a New York City police officer. Mr. Garner was killed after being subjected to an unauthorized chokehold during the course of an attempted arrest for the crime of selling loose cigarettes. These events took place in broad daylight, on a public street, and were videotaped by a bystander.<sup>11</sup> With this killing, Mr. Garner joined the seemingly endless stream of unarmed Black men killed by police officers in recent years.<sup>12</sup> And while this phenomenon only recently exploded into public consciousness, it is not new.

Between 1877 and 1950, nearly 4000 people—mostly Black—were lynched in the American South.<sup>13</sup> Tragically, law enforcement officers were all too often involved in these atrocities.<sup>14</sup> Indeed, in 1946, Thurgood Marshall—the NAACP Legal Defense & Educational Fund, Inc.’s first Director-Counsel and, later, the first African-American United States Supreme Court Justice—was almost lynched by Tennessee police officers.<sup>15</sup> The Pulitzer Prize winning book, *Devil in the Grove: Thurgood Marshall, the Groveland Boys, and the Dawn of a New America*, powerfully describes that terrifying night as follows:

Marshall knew that the Ku Klux Klan in Columbia was deeply entrenched in the local police; he knew its members served

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<sup>11</sup> See Eric Garner video, *supra* note 4; see also Benjamin Mueller & Nate Schweber, *Eric Garner Is Remembered One Year After His Death*, N.Y. TIMES (July 17, 2015), <http://www.nytimes.com/2015/07/18/nyregion/eric-garner-death-anniversary.html>.

<sup>12</sup> See Laughland et al., *supra* note 10; *The Counted*, *supra* note 10.

<sup>13</sup> EQUAL JUSTICE INITIATIVE, LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR 40 (2015).

<sup>14</sup> See Ryan D. King et al., *Contemporary Hate Crimes, Law Enforcement, and the Legacy of Racial Violence*, 74 AM. SOC. REV. 291, 294 (2009) (noting the involvement of law enforcement in lynchings); David Garland, *Penal Excess and Surplus Meaning: Public Torture Lynchings in Twentieth-Century America*, 39 LAW & SOC’Y REV. 793, 802–04, 810 (2005) (mentioning the role law enforcement played in encouraging and/or failing to stop lynchings).

<sup>15</sup> Stephen Smith & Kate Ellis, *Thurgood Marshall Before the Court: Columbia Race Riots*, AM. RADIOWORKS, <http://americanradioworks.publicradio.org/features/marshall/> (last visited Apr. 16, 2016) (follow “Race riots in Columbia, TN” hyperlink).

as sheriffs and magistrates. He had read the NAACP reports. This wasn't the Klan of "cowardly hood," rather, it "wears cap and visor, and shining badge . . . . It is the LAW. It arrests its stunned victims, unlisted."<sup>16</sup>

So when Marshall was taken at gunpoint by the police:

[He] knew that nothing good ever happened when police cars drove black men down unpaved roads. He knew that the bodies of blacks—the victims of lynchings and random murders—had been discovered along these riverbanks for decades. And it was at the bottom of Duck River that . . . the NAACP lawyers had been told their bodies would end up.<sup>17</sup>

Thankfully, Thurgood Marshall survived his close call with Southern police officers—thanks to the enormous courage of his (White) local counsel who ignored the police order to leave after Marshall had been taken into custody and, instead, followed the police car to the foot of the river<sup>18</sup>—but thousands of others did not.

In the early twentieth century, police officers committed an untold number of criminal acts of violence<sup>19</sup> to enforce racialized social and cultural boundaries,<sup>20</sup> grand juries routinely refused to indict

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<sup>16</sup> GILBERT KING, *DEVIL IN THE GROVE: THURGOOD MARSHALL, THE GROVELAND BOYS, AND THE DAWN OF A NEW AMERICA* 17 (2012).

<sup>17</sup> *Id.* at 18.

<sup>18</sup> *Id.*

<sup>19</sup> See, e.g., Emma Coleman Jordan, *A History Lesson: Reparations for What?*, 58 N.Y.U. ANN. SURV. AM. L. 557, 585–86 (2003) ("Legal officials participated in lynchings in varying degrees. In Mississippi, a sheriff allowed two prisoners to be taken from his jail and did nothing to prevent the lynching that ensued. Similarly, in Louisiana, a sheriff virtually gave an inmate to the mob. In another case, a mob accompanied police who were hunting for two African-Americans; after the police found the suspects, the mob lynched them. When Roy Hammond was lynched in Missouri, the sheriff's deputies allegedly handed Hammond over to the mob and then assisted in the lynching. A South Carolina chief of police assisted in the lynching of Bennie Thompson after Thompson had an argument with a white man. In another case, after a search party found a fugitive African-American, the sheriff was telephoned and asked to pick up the fugitive; the sheriff responded by saying, 'I'm busy, just go ahead and lynch him,' and the mob followed his advice.").

<sup>20</sup> See, e.g., SHERRILYN A. IFILL, *ON THE COURTHOUSE LAWN: CONFRONTING THE LEGACY OF LYNCHING IN THE TWENTY-FIRST CENTURY* 65 (2007) ("Lynching enforced white privilege, Jim Crow, and white domination of the political, educational, and economic advancement of the community through terror. The horror of lynching reminded blacks that, as a last resort, violent reprisals could be exacted for breaches of the social order. This means that, at least in the short term, ordinary whites—even those who would never have joined a lynch mob—benefited from lynching, just as they benefited from the other tools of white supremacy."). See *id.* at 77–83 for examples of how:

[t]he first and therefore most important legal actors to respond to real or imagined black criminality were police officers. Their action or inaction set the stage for how a black man suspected of committing a

White perpetrators of mob violence and lynchings,<sup>21</sup> and “[t]here is no record of any white person ever having been convicted of murder for lynching a black person—not in the thousands of instances of white-on-black lynchings in thirty-four states.”<sup>22</sup> These are some of the “hard truths” about which FBI Director, James Comey, surely spoke of when, in February of 2015, he acknowledged: “At many points in American history, law enforcement enforced the status quo, a status quo that was often brutally unfair to disfavored groups.”<sup>23</sup> So, when Eric Garner said, “I Can’t Breathe,” he spoke not just for himself, but also for Mr. Brown, Mr. Rice, Mr. Gurley, and the thousands of Black men (and women) who lost their lives during, and after, the lynching years.

Fortunately, neither the unlawful killings nor the willful blindness of the justice system was able to withstand the harsh light of exposure and scrutiny. Although there were no iPhone cameras in the early 1900s, Ida B. Wells and the then-fledgling NAACP fought the secrecy and anonymity that facilitated and encouraged the lynchings by publicizing them—through the drafting and dissemination of pamphlets—and by debunking the false and disingenuous justifications that were offered for the murders.<sup>24</sup> With this effort, they drew national and international attention (and condemnation) to the lawlessness of the American South and the horror of lynching.<sup>25</sup> Wells and the NAACP also organized and advocated for creative structural changes to ensure that the legal system protected Black lives and punished White offenders.<sup>26</sup> They campaigned for the passage of federal legislation that imposed criminal and financial liability on law enforcement agencies and jurisdictions that failed to protect Black citizens from mob violence.<sup>27</sup> Ultimately, this sustained campaign bore

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crime against a white person would be treated. Often police officers determined whether a black man would face a trial or a lynch mob.

<sup>21</sup> JAMES HARMON CHADBOURN, *LYNCHING AND THE LAW* 78 (1933) (discussing the lack of indictments for a majority of lynchings).

<sup>22</sup> IFILL, *supra* note 20, at 75.

<sup>23</sup> James B. Comey, Dir., FBI, Remarks at Georgetown University: Hard Truths: Law Enforcement and Race (Feb. 12, 2015), <https://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race>.

<sup>24</sup> See generally IDA B. WELLS-BARNETT, *SOUTHERN HORRORS: LYNCH LAW IN ALL ITS PHASES* (1892), <http://www.gutenberg.org/files/14975/14975-h/14975-h.htm>.

<sup>25</sup> See Erin Edmonds, *Mapping the Terrain of Our Resistance: A White Feminist Perspective on the Enforcement of Rape Law*, 9 HARV. BLACKLETTER J. 43, 57 (1992) (describing how Ida B. Wells’s anti-lynching campaign generated a sense of international shame that contributed to the reduction in the number of lynchings).

<sup>26</sup> EQUAL JUSTICE INITIATIVE, *supra* note 13, at 48–53. See generally WILLIAM F. PINAR, *THE GENDER OF RACIAL POLITICS AND VIOLENCE IN AMERICA: LYNCHING, PRISON RAPE, & THE CRISIS OF MASCULINITY* 419–86 (2001).

<sup>27</sup> EQUAL JUSTICE INITIATIVE, *supra* note 13; *Southern Men Fight Anti-lynching Bill*, N.Y.

fruit: even without the passage of the proposed legislation, the abhorrent practice of lynching eventually faltered under the weight of the scrutiny.<sup>28</sup>

Director Comey has urged law enforcement recognition of this painful history, explaining that: “One reason we cannot forget our law enforcement legacy is that the people we serve and protect cannot forget it, either. So we must talk about our history. It is a hard truth that lives on.”<sup>29</sup> And he is certainly right. But the hard truths about law enforcement involvement in acts of violence and terror committed against African-Americans live on not only in the minds and memories of the African-American community, but also in the memories of the White community and, ultimately, the structures of the criminal justice system.

Testimony presented in a death penalty case in Pine Bluff, Arkansas, offers just one example of how this history continues to corrupt the functioning of the criminal justice system. Pine Bluff is a Southern city with a deep and terrifying history of racial violence.<sup>30</sup> In 1866, twenty-four Black men, women, and children were lynched in one night.<sup>31</sup> There were (at least) another eight lynchings in Pine Bluff between 1860 and 1930, including a double lynching where one victim was taken out of the jail by a mob and hung from the street lamp in

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TIMES, Dec. 20, 1921, <http://query.nytimes.com/mem/archive-free/pdf?res=9905E4D9113EEE3ABC4851DFB467838A639EDE>; see generally *Antilynching: Hearing Before the H. Comm. on the Judiciary*, 66th Cong. (1920). For the text of the Anti-lynching Bill, also known as the Dyer Bill, see *NAACP History: Anti-lynching Bill*, NAACP, <http://www.naacp.org/pages/naacp-history-anti-lynching-bill> (last visited Nov. 30, 2015).

<sup>28</sup> See EQUAL JUSTICE INITIATIVE, *supra* note 13, at 48–53; SARAH L. SILKEY, BLACK WOMAN REFORMER: IDA B. WELLS, LYNCHING, & TRANSATLANTIC ACTIVISM, 138–50 (2015); Edmonds, *supra* note 25; see also Robert Siegel, *Anti-lynching Law in U.S. History*, NPR (June 13, 2005, 12:00 AM), <http://www.npr.org/templates/story/story.php?storyId=4701576>.

<sup>29</sup> Comey, *supra* note 23.

<sup>30</sup> See JESSIE PARKHURST GUZMAN, DIR., TUSKEGEE INST., “ROUTINE” VIOLENCE IN THE SOUTH—1963, *reprinted in* A SOCIAL HISTORY OF RACIAL VIOLENCE 185, 186, 188, 193 (Allen D. Grimshaw ed., 2009) (recounting church bombings and lynchings in Pine Bluff).

<sup>31</sup> ERIC FONER, RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION 1863–1877 119 (1988) (“In 1866, after ‘some kind of dispute with some freedmen,’ a group near Pine Bluff, Arkansas, set fire to a black settlement and rounded up the inhabitants. A man who visited the scene the following morning found ‘a sight that apald [sic] me[.] 24 Negro men woman [sic] and children were hanging to trees all round the Cabbins.’”); see also JIMMY CUNNINGHAM, JR. & DONNA CUNNINGHAM, IMAGES OF AMERICA: AFRICAN AMERICANS OF PINE BLUFF AND JEFFERSON COUNTY 13 (2013); *EJI’s History of Racial Injustice Highlight: Racial Terrorism*, EQUAL JUST. INITIATIVE (Dec. 19, 2013), <http://www.eji.org/node/858>.

front of the Pine Bluff courthouse.<sup>32</sup> Perhaps not surprisingly, given this history, “Arkansas’s most stalwart defender of lynchers during the 1920s was the Pine Bluff Daily Graphic.”<sup>33</sup>

Contemporary evidence indicates that these crimes and these attitudes have left a lasting impact on Pine Bluff’s criminal justice system. Indeed, the first African-American prosecutor in Pine Bluff offered uncontradicted testimony detailing how deeply entrenched racial hierarchies and racial fears in Pine Bluff impacted jury selection in the early 1990s (and after). He explained that when he served as the sole African-American prosecutor in the county, the perspective of his White prosecutor colleagues was:

[Y]our perfect juror was a black person who was over 60, lived in a segregated society. [The prosecutors] thought they were predictable . . . . They were used to taking orders from white people, or at least not standing up to white people. And if—if you had a jury with—with 11 whites and one black, and an elderly black, [the prosecutors believed] that one black person [was] not going to buck those 11 white people. And that was pretty much true.<sup>34</sup>

He explained that the prosecutors knew which Black prospective jurors were likely to set aside their own beliefs about a case and submit to judgment of their White peers because:

[The prosecutors] knew the [Black prospective jurors] from the community. [Black prospective jurors] worked at the country club. They were somebody’s maid. They lived on somebody’s plantation. [The prosecutors] pretty much knew what they were getting.<sup>35</sup>

He said that the strategy of selecting prospective jurors who “were used to taking orders from white people” was effective because, within the Black community, there was a palpable fear of the justice system:

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<sup>32</sup> *Two Murderers Lynched*, N.Y. TIMES, Feb. 15, 1892, <http://query.nytimes.com/mem/archive-free/pdf?res=9C00E5D61738E233A25756C1A9649C94639ED7CF>; see also CHARLES H. J. TAYLOR, IS GOD DEAD? (Feb. 19, 1892), reprinted in LYNCHING IN AMERICA: A HISTORY IN DOCUMENTS 119, 119–20 (Christopher Waldrep ed., 2006).

<sup>33</sup> Todd E. Lewis, *Mob Justice in the “American Congo”: “Judge Lynch” in Arkansas During the Decade After World War I*, 52 ARK. HIST. Q. 156, 172 (1993) (“In response to anti-lynching commentary in the wake of a state lynching spree in March 1921, the *Daily Graphic* claimed that emphasis was being misplaced. ‘Too much about the terrible crime of lynching and . . . too little about the terrible crimes which provoke lynchings’ was being said. While lynching was ‘a terrible crime,’ asserted the *Daily Graphic*, ‘the crime which provokes lynching was much more terrible.’”) (alteration in original).

<sup>34</sup> Transcript of Rule 37 Hearing vol. 3, at 574–75, *Reams v. Arkansas*, No. CR-1993-301-3-6 (Jefferson Cnty. Ct. Ark. 6th Div. Aug. 22, 2007).

<sup>35</sup> *Id.* at 575.

[B]lack jurors had a fear of serving. They had a fear of if you made a decision that displeased the white community or the white power structure, that—some type of retribution . . . . In general—and I’m going back now to the Seventies—the courthouse was a bad place for a black man to be. So, people didn’t want to come to the courthouse, didn’t want any contact with law enforcement officers, fearful of, you know, prosecutors.<sup>36</sup>

Thus, just as Director Comey explained, the racialized violence in Pine Bluff’s history was not forgotten by the African-American community. Nor was it forgotten by the White (law enforcement) community. And, a half-century later, that violence significantly impaired African-American participation on juries.

It is for these reasons that “I Can’t Breathe” must be understood as a poignant articulation of how generations of racialized violence—particularly by law enforcement—has impaired the American criminal justice system.

#### HANDS UP, DON’T SHOOT

On August 9, 2014, less than a month after Mr. Garner was killed, Michael Brown was shot to death by a police officer in Ferguson, Missouri.<sup>37</sup> Witnesses immediately stated that Mr. Brown’s hands were up, in surrender, right before he was killed.<sup>38</sup> Although this testimony later faced scrutiny and contradiction,<sup>39</sup> the idea that a law enforcement officer responded to non-violence with lethal force struck a dangerously tender nerve and ignited a wave of protests across the country.<sup>40</sup> Perhaps because this image of a Black man in surrender being killed by a White police officer was so powerfully evocative of events of the past, Michael Brown’s death became the breaking point for a community besieged by police brutality and the launchpad for a new generation of calls for structural reform.

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<sup>36</sup> *Id.* at 591–92.

<sup>37</sup> Bosman & Fitzsimmons, *supra* note 5.

<sup>38</sup> Grinberg, *supra* note 2.

<sup>39</sup> See generally U.S. DEP’T OF JUSTICE, DEPARTMENT OF JUSTICE REPORT REGARDING THE CRIMINAL INVESTIGATION INTO THE SHOOTING DEATH OF MICHAEL BROWN BY FERGUSON, MISSOURI POLICE OFFICER DARREN WILSON (Mar. 4, 2015), [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj\\_report\\_on\\_shooting\\_of\\_michael\\_brown\\_1.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf); Jeremy Diamond, *What the Department of Justice Ferguson Report Says About ‘Hands Up, Don’t Shoot’*, CNN (Mar. 5, 2015, 5:02 PM), <http://www.cnn.com/2015/03/05/politics/ferguson-report-hands-up-michael-brown-darren-wilson/>.

<sup>40</sup> Grinberg, *supra* note 2.

Thus, “Hands Up, Don’t Shoot” reminds us that the specter of a government responding to non-violence with violence has inspired and propelled social movements around the country and the world—from Tiananmen Square, China<sup>41</sup> to Selma, Alabama. Indeed, 2015 marked the fiftieth anniversary of Bloody Sunday, March 7, 1965—the day that state troopers in Selma, Alabama violently assaulted 600 unarmed men, women, and children, who peacefully attempted to march across the Edmund Pettus Bridge to draw national attention to the African-American community’s fight to participate in the political process.<sup>42</sup> On that day, Alabama Governor George Wallace entered an order prohibiting the march, so law enforcement officers met the peaceful marchers armed with guns and tear gas.<sup>43</sup> And, when the protesters stopped to pray, they were clubbed, spat on, whipped, and trampled by horses.<sup>44</sup>

The police attack on the Selma protesters was broadcasted on televisions throughout the country<sup>45</sup> and, much like the videos we see today, this specter of police meeting non-violence with violence not only shocked and horrified the nation, it produced transformative action. The lawyers of the NAACP Legal Defense Fund sought—and won—a preliminary injunction dissolving George Wallace’s order prohibiting the march and devised a logistical plan for a new march.<sup>46</sup> Ultimately, Alabama was not only prohibited from “intimidating, threatening, coercing or interfering” with the march, it was required to provide the marchers with “adequate police protection.”<sup>47</sup> And eight days after Bloody Sunday, President Lyndon B. Johnson gave a televised address to a joint session of Congress calling for the passage of comprehensive voting rights legislation.<sup>48</sup> He reminded the

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<sup>41</sup> Noah Rayman, *5 Things You Should Know About the Tiananmen Square Massacre*, TIME (June 4, 2014), <http://time.com/2822290/tiananmen-square-massacre-anniversary/>.

<sup>42</sup> Roy Reed, *Alabama Police Use Gas and Clubs to Rout Negroes*, N.Y. TIMES, Mar. 8, 1965, <http://www.nytimes.com/packages/html/books/mlk-rout.pdf>.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> GENE ROBERTS & HANK KLIBANOFF, *THE RACE BEAT: THE PRESS, THE CIVIL RIGHTS STRUGGLE, AND THE AWAKENING OF A NATION* 382–87 (2006).

<sup>46</sup> Roy Reed, *Dr. King to Lead: U.S. Judge Petitioned to Strike Down Ban of Gov. Wallace*, N.Y. TIMES, Mar. 9, 1965, <http://www.nytimes.com/packages/html/books/mlk-second.pdf>.

<sup>47</sup> *Williams v. Wallace*, 240 F. Supp. 100, 109 (M.D. Ala. 1965).

<sup>48</sup> Lyndon B. Johnson, U.S. President, Special Message to the Congress: The American Promise (Mar. 15, 1965), <http://www.lbjlibrary.org/lyndon-baines-johnson/speeches-films/president-johnsons-special-message-to-the-congress-the-american-promise>.

Congress, and the country, that:

What happened in Selma is part of a far larger movement which reaches into every section and State of America. It is the effort of American Negroes to secure for themselves the full blessings of American life. Their cause must be our cause too. Because it is not just Negroes, but really it is all of us, who must overcome the crippling legacy of bigotry and injustice. And we shall overcome.<sup>49</sup>

Two days later, the law that would become the Voting Rights Act of 1965 was introduced.<sup>50</sup> It was signed into law on August 6<sup>th</sup> of that year.<sup>51</sup>

Thus, the words “Hands Up, Don’t Shoot” harness the power and the momentum of the movements that have, throughout history, strategically and effectively responded to law enforcement’s most egregious abuses.

#### BLACK LIVES MATTER

Finally, there is “Black Lives Matter.” This is the call to action. It is a reminder that the criminal justice system, while much improved, still struggles to produce fair, and race-neutral, justice. In order to actually make “Black Lives Matter,” we must:

- Document and expose the unfair, unauthorized, and illegal beatings and killings of Black people by law enforcement officers because doing so will lead to shock, horror, and, then, change;
- Demand reliable data on police beatings and killings because without such documentation, the problem remains shrouded in the kind of secrecy that enables it to continue;
- Hold law enforcement officers and agencies accountable for their conduct, not just by prosecuting individual officers but also by requiring the training and oversight that will prevent the killings from happening in the first place;
- Ensure transparency in policing, thus the effectiveness of

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<sup>49</sup> *Id.*

<sup>50</sup> KEVIN J. COLEMAN, CONG. RESEARCH SERV., R43626, THE VOTING RIGHTS ACT OF 1965: BACKGROUND AND OVERVIEW 12 (2015), <https://www.fas.org/sgp/crs/misc/R43626.pdf>.

<sup>51</sup> *Id.*; see generally U.S. COMM’N ON CIVIL RIGHTS, THE VOTING RIGHTS ACT: SUMMARY AND TEXT (1971), <https://www.law.umaryland.edu/marshall/usccr/documents/cr11032.pdf>.

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body-worn cameras must be immediately, and thoroughly, investigated and, if viable, put in place; and

- Review and, where necessary, change the laws that are already on the books. Decisions like *McCleskey v. Kemp*<sup>52</sup>—which held that gross racial disproportionality in the administration of the criminal justice system is beyond the reach of the Constitution—are unacceptable.

The good news is that individuals and organizations throughout the country, from inside and outside of law enforcement, are working together to achieve these goals.<sup>53</sup> With vigilance and a clear understanding of history, these efforts can and will move the country closer to the moment when phrases like “I Can’t Breathe,” “Hands Up, Don’t Shoot,” and even “Black Lives Matters” are relics of a distant past.

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<sup>52</sup> 481 U.S. 279 (1987).

<sup>53</sup> See generally, e.g., PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING (2015), [http://www.cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).