

UNLAWFUL SILENCE: ST. LOUIS FAMILIES' FIGHT FOR RECORDS AFTER THE KILLING OF A LOVED ONE BY POLICE

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INTRODUCTION

I did not cry when I learned my cousin Ronnie had been killed by the police. I asked my mom if the family was okay. I asked what happened. She told me they only knew the story the police were telling—that my cousin had inexplicably run out of his house shooting a gun and been shot dead by multiple officers. I told my mother to let me know if she needed anything and eventually hung up the phone.¹ I finished reading for the next day's law school class and slept fitfully. I returned to school the next day.

My family had become another one of the thousands who lost loved ones to police shootings or other forms of state violence. In the days and years following the killings of Michael Brown, Eric Garner, and countless others, this seemed almost inevitable for a black and working-class family like mine. As of the writing of this piece, my family is still waiting to learn from the Mississippi Bureau of Investigations about the circumstances of Ronnie's death.

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1. See Therese Apel, *Man Dead After Shooting at Greenville Police*, CLARION-LEDGER (Jan. 22, 2017), <https://www.clarionledger.com/story/news/local/2017/01/22/man-dead-after-shooting-greenville-police/96920870/>.

My family's experience of being left in the dark as to the circumstances of our loved one's death drove me to seek out other families to see if they shared these experiences. I started in St. Louis, Missouri at a summer internship with a nonprofit civil rights law firm called ArchCity Defenders ("ArchCity") after my first year of law school. Within my first weeks at ArchCity, I was asked to investigate the death of Isaiah Hammett. Isaiah was twenty-one years old when he was brutally shot dead by a SWAT team in St. Louis.² At one point, the family members sat together in the front room responding to our questions. Their tears fell inside a home that now sported bullet holes in the walls and a door that had been broken down by the police.³ As they shared their story, I saw what I had seen in my own family: confusion and a lack of understanding of what to do next. Isaiah's family had joined a long and seemingly never-ending community of those who had lost loved ones to police and other forms of state violence in St. Louis: Cary Ball.⁴ Michael Brown.⁵ Tyler Gebhard.⁶ Louis Payton.⁷ Kiwi Herring.⁸ I decided then that I would connect with other St. Louis families to learn about their experiences and uncover how the law could help them, if at all.

I conducted multiple interviews of family members of five different people who had been killed by police or who died while in police custody in St. Louis.⁹ Despite the unique nature of each family member's loss, I

2. See Danny Wicentowski, *SWAT Team Insists They IDed Themselves Before Raid That Killed Isaiah Hammett*, RIVERFRONT TIMES (Nov. 12, 2018, 9:37 AM), <https://www.riverfronttimes.com/newsblog/2018/11/12/swat-team-insists-they-ided-themselves-before-raid-that-killed-isaiah-hammett>.

3. See *id.* (describing how the SWAT team shot holes into the walls and broke down the Torres' door during the killing of Isaiah Hammett).

4. See Daniel Shular, *Cary Ball's Family Asks Prosecutors to Reopen 2013 Police Shooting*, RIVERFRONT TIMES (Dec. 20, 2017), <https://www.riverfronttimes.com/newsblog/2017/12/20/cary-balls-family-asks-prosecutors-to-reopen-2013-police-shooting>.

5. See Timothy Williams, *Five Years After Michael Brown's Death, His Father Wants a New Investigation*, N.Y. TIMES (Aug. 15, 2019), <https://www.nytimes.com/2019/08/09/us/ferguson-michael-brown.html>.

6. See Tony Messenger, *Messenger: Family Wants Answers in Shooting Death of Tyler Gebhard by Off-duty Cop*, ST. LOUIS POST-DISPATCH (Nov. 17, 2016), https://www.stltoday.com/news/local/columns/tony-messenger/messenger-family-wants-answers-in-shooting-death-of-tyler-gebhard/article_f8cd63ab-792d-57b0-8a07-bfedb012a88d.html.

7. See Sophie Hurwitz, *'Close the Workhouse': Louis Payton Died in a City Jail, and His Family and Activists Demand Answers – and Actions*, ST. LOUIS AM. (Aug. 15, 2018), http://www.stlamerican.com/news/local_news/close-the-workhouse-louis-payton-died-in-a-city-jail/article_fac9c886-a0ac-11e8-8feb-6f54a0e2e12e.html.

8. See Nassim Benchaabane, *One Year Later, Family and Friends Remember Transgender Woman Shot by St. Louis Police*, ST. LOUIS POST-DISPATCH (Aug. 25, 2018), https://www.stltoday.com/news/local/crime-and-courts/one-year-later-family-and-friends-remember-transgender-woman-shot/article_ced0ca5a-9fad-5ad0-ac29-a86026156722.html.

9. I followed an actively anti-racist and feminist methodology, termed "feminist ethnography," in which I conducted in-person and remote interviews with the surviving

unearthed certain similarities. Almost uniformly, the families sought three things following the loss of their loved ones: information, justice, and support. Almost uniformly, the families faced similar barriers getting them.

This Article begins with a discussion of the barriers families face in gaining information on the circumstances of their loved ones' deaths by police. It then turns to policies and practices regarding documentation of police incidents and other relevant government records, and how local government practices create obstacles to families' access. The Article then explores Missouri's existing public records law, how it should be used to address these barriers, and the ways it fails to do so today. Finally, the Article identifies potential approaches to overcoming these barriers and ensuring that families have access to the information they need.

I. FAMILIES JUST WANT TO KNOW WHAT HAPPENED

“What they did to him that night . . . If I leave [this life], I'm going to still talk and try to fight to [find] out what happened to him.”

- Rauchandia Robinson, sister of Germane Robinson¹⁰

Closure has been defined as the “peace, relief, a sense of justice, the ability to move on—that comes with finality,” but the term has different meanings based on those invoking it.¹¹ For the families I interviewed, a critical aspect of getting closure is simply to learn what happened. The story of Germane Robinson's family is just one that encapsulates this reality.

My first interview with Germane's family happened around their dinner table in December 2018. Germane's mother, Brenda, his sister, Rauchandia, and his brother, Anthony, invited me into their home. As we sat down, they introduced themselves and told me their names, their jobs, and about their loved one, Germane. As the family told me how they came to find out that Germane had died in police custody, it became readily apparent that this information was hard fought and still woefully incomplete. Rauchandia made repeated calls to the police department, hand delivered letters, and eventually hired an attorney on behalf of the

families of those killed by police. Rather than simply using insights gained from those interviewed to write this Article alone, I instead engaged in a collaborative writing practice with those interviewed, resulting in multiple interviews and the opportunity for family members to give feedback and input on the findings and writing. For more information on feminist ethnography, see DANA-AIN DAVIS & CHRISTA CRAVEN, FEMINIST ETHNOGRAPHY 122–26 (Leanne Silverman et al. eds., 2016).

10. Interview with Brenda, Anthony, and Rauchandia Robinson, in St. Louis, Mo. (Dec. 16, 2018).

11. Susan A. Bandes, *Victims, "Closure," and the Sociology of Emotion*, 72 L. & CONTEMP. PROBS. 1, 2 (2009).

family just to get answers.¹² To this day, the Clayton Police Department has still failed to provide sufficient information on the circumstances of Germane’s death.¹³

Rauchandia will not stop until she finds out what happened to Germane. Her story is not so different from that of Toni Taylor, Marlene Gebhard, or Gina Torres. It took six months for Toni Taylor to receive the police report regarding the killing of her son, Cary Ball.¹⁴ It took almost a full year for Gina Torres to receive the police report associated with the killing of her son, Isaiah Hammett.¹⁵ For Marlene Gebhard, the materials provided by the police did not match the audio recording of witnesses to the killing of her grandson, Tyler Gebhard.¹⁶ Marlene spent hundreds of hours personally transcribing witness audio recordings due to the police department’s failure to provide accurate information.¹⁷

II. THE INFORMATION FAMILIES SEEK EXISTS

Police officers who kill loved ones are generally the primary source of information as to the circumstances of death. However, officers may be subject to criminal sanctions or loss of employment for their actions.¹⁸ Therefore, families may find it difficult to get information directly from the source unless the officer is granted immunity of some sort.¹⁹ Relying on unwritten rules and customs, fellow officers are also unlikely to share information on shootings committed by another officer.²⁰ Families are instead left to turn to the documents created by the police department, in the form of police reports or investigations, or other documents created by agencies like the Office of the Medical Examiner or the prosecutor’s office.²¹

12. Interview with Brenda, Anthony, and Rauchandia Robinson, in St. Louis, Mo. (Dec. 16, 2018).

13. *Id.*

14. Interview with Toni Taylor, in St. Louis, Mo. (Dec. 15, 2018).

15. Interview with Gina Torres, in St. Louis, Mo. (Dec. 15, 2018).

16. Telephone Interview with Marlene Gebhard (Dec. 21, 2018).

17. *Id.*

18. INT’L ASS’N OF CHIEFS OF POLICE & U.S. DEP’T OF JUSTICE: OFFICE OF CMTY. ORIENTED POLICING SERVS., OFFICER-INVOLVED SHOOTINGS: A GUIDE FOR LAW ENFORCEMENT LEADERS 7, 17 (2016), https://www.theiacp.org/sites/default/files/2018-08/e051602754_Officer_Involved_v8.pdf (describing how a police department may grant an officer who killed someone *Garrity* use immunity to give the officer protection from loss of employment and use of testimony in criminal prosecution).

19. *See id.* at 17.

20. David Rudovsky, *Police Abuse: Can the Violence be Contained?*, 27 HARV. C.R.-C.L. L. REV. 465, 481 n.60 (1992) (“The ‘police code of silence’ is an unwritten rule and custom that police will not testify against a fellow officer and that police are expected to help in any cover-up of illegal actions.”).

21. *See, e.g.*, John Kelly & Mark Nichols, *We Found 85,000 Cops Who’ve Been Investigated for Misconduct. Now You Can Read Their Records*, USA TODAY (Oct. 14, 2019), <https://www.usatoday.com/in-depth/news/investigations/2019/04/24/usa-today-revealing-misconduct-records-police-cops/3223984002/> (discussing the need to increase access to public records to increase public scrutiny of law enforcement).

The St. Louis Metropolitan Police Department (“SLMPD”) created the Force Investigation Unit (“FIU”), an internal unit with the mandate to investigate “every St. Louis city officer who kills or wounds someone with a gun.”²² The FIU is tasked with creating reports of their investigations into police shootings.²³ These reports supplement reports that may be created by the SLMPD Internal Affairs Division, which investigates citizen complaints about the conduct of SLMPD officers.²⁴

Other government agencies also create documentation that may help a surviving family piece together the circumstances of a loved one’s death. The first is the Office of the Medical Examiner. Under certain circumstances, Missouri law requires the police or any person having knowledge of deaths to immediately notify the county office of the medical examiner.²⁵ These requirements attach for deaths that occur as a result of “[v]iolence by homicide” or deaths “[s]uddenly when in apparent good health; . . . [w]hile in the custody of the law, or while an inmate in a public institution.”²⁶ The police or person with knowledge of the death is to provide the county’s medical examiner’s office with the “known facts concerning the time, place, manner and circumstances of the death.”²⁷ Immediately upon notification, the office of the medical examiner must take charge of the body and conduct a full investigation of the facts “concerning the medical causes of death.”²⁸ The St. Louis County Medical Examiner’s Office is to be notified for all such deaths occurring in the County. The report stemming from this investigation may be a valuable source for families to find information as to how the family’s loved one was killed, including both the cause and manner of death.²⁹ However, if the prosecutor’s office or the police department plan to use the Medical Examiner’s investigation as part of their criminal

22. The FIU came into existence following a study of St. Louis police shootings by University of Missouri-St. Louis criminologist David Klinger, over a year of negotiations with the police, and in the wake of the killing of Michael Brown. See Christine Byers, *New St. Louis Police Unit Focuses on Officer-Involved Shootings*, ST. LOUIS POST-DISPATCH (Sept. 28, 2014) [hereinafter Byers, *New St. Louis Police Unit*], <https://www.stltoday.com/news/local/crime-and-courts/new-st-louis-police-unit-focuses-on-officer-involved-shootings/article145d667b-31e6-5aa5-a9f8-76ca54647638.html>; see also Christine Byers, *Who Investigates After Police Shootings in St. Louis*, ST. LOUIS POST-DISPATCH (Mar. 17, 2019), https://www.stltoday.com/news/local/crime-and-courts/who-investigates-after-police-shootings-in-st-louis/article_abf1e7af-7e1b-52c4-b5f2-21f65ad6eeb1.html.

23. See Byers, *New St. Louis Police Unit*, *supra* note 22.

24. *Internal Affairs*, ST. LOUIS METROPOLITAN POLICE DEP’T, (last visited Apr. 12, 2019), https://www.slmpr.org/internal_affairs.shtml.

25. MO. REV. STAT. § 58.720 (2008).

26. *Id.*

27. *Id.*

28. *Id.*

29. See, e.g., *State v. Davidson*, 242 S.W.3d 409, 417 (Mo. Ct. App. 2007) (autopsy report “offered to prove [a] victim’s cause of death”).

investigation, the report is kept secret under Missouri law until the investigation becomes inactive.³⁰

Prosecutor's offices may also provide information for families. At approximately the same time that the SLMPD started the FIU, the St. Louis Circuit Attorney's Office ("CAO") adopted a protocol in which it agreed to conduct an independent review of all police officer shootings resulting in injury or death that occur in the City of St. Louis.³¹ Under the adopted protocol, "[t]hese reviews occur after, and are fully independent of, an investigation undertaken by the SLMPD's Force Investigation Unit (FIU)."³² These investigations are either done through a grand jury or the CAO may conduct the investigation itself.³³ From the investigation, the CAO is to determine if "a criminal violation of Missouri law has occurred and if such violation can be proven beyond a reasonable doubt in a court of law."³⁴ In practice, the CAO's investigation and subsequent report is largely based on the evidentiary findings of the FIU investigation, rather than evidence it has collected.³⁵ This has prompted the current Circuit Attorney to seek additional funding to create an entirely separate investigative team.³⁶ Until that team is created, it is questionable if the CAO reviews provide much new information for families beyond its determination of whether a criminal violation was committed.

III. THE MISSOURI SUNSHINE LAW AND THE AGENCIES THAT REFUSE TO COMPLY WITH THE LAW FAIL FAMILIES SEEKING INFORMATION ABOUT THEIR LOVED ONES' KILLINGS

I'm trying to use [my lawyer] to get the answers for my son, and to fight for my son's justice—But [the police], they

30. See *News-Press & Gazette Co. v. Cathcart*, 974 S.W.2d 576, 580 (Mo. Ct. App. 1998) (holding autopsy report prepared by examiner was exempted from disclosure under the Sunshine Law); see also MO. REV. STAT. § 610.100.

31. St. Louis Circuit Attorney's Office, *Police Shooting Reports* (last visited April 12, 2019), <http://www.circuitattorney.org/Police%20Shooting%20Reports.aspx>.

32. *Id.*

33. *Id.*

34. *Id.*

35. See, e.g., *Force Investigative Unit Finishes Investigation into Shooting Death of Kajieme Powell*, FOX2NOW ST. LOUIS (Feb. 17, 2015), <https://fox2now.com/2015/02/17/force-investigative-unit-finishes-investigation-into-shooting-death-of-kajieme-powell/>.

36. Celeste Bott, *St. Louis Prosecutor Wants Independent Unit to Investigate Police Shootings, but Plan Stalls*, ST. LOUIS POST-DISPATCH (Mar. 7, 2018), https://www.stltoday.com/news/local/crime-and-courts/st-louis-prosecutor-wants-independent-unit-to-investigate-police-shootings/article_c8f4ad55-1c04-5ea4-8ff9-dc9e38f96f7d.html.

give him problems. They won't give him . . . everything that he's been asking for.

- Gina Torres, mother of Isaiah Hammett³⁷

Each call I made, each door I knocked on, it was closed or they sent me to someone else. And it was just so hurtful.

- Rauchandia Robinson, sister of Germane Robinson³⁸

Missouri's public records law, known as the "Sunshine Law," should give surviving families relatively easy access to the information they need, but that is not the case.³⁹ Missouri was an early adopter of open records laws.⁴⁰ Similar to the federal Freedom of Information Act, the Sunshine Law was created to ensure transparency and openness as a matter of public policy.⁴¹ As a result, records made by government agencies in Missouri are presumed to be open to the public unless the law provides a specific exception for a particular record or type of record.⁴²

According to the Sunshine Law, all incident reports and arrest reports are open records that should be provided by law enforcement if requested.⁴³ However, the Sunshine Law also allows law enforcement agencies to redact information in incident reports.⁴⁴ The Law only requires agencies to provide "the date, time, specific location, name of the victim and immediate facts and circumstances."⁴⁵ This means that information such as the name of the officer who killed the family's loved one may be removed lawfully from an incident report, denying the family

37. See Bandes, *supra* note 11.

38. Interview with Gina Torres, Toni Taylor, Rauchandia Robinson, Anthony Robinson, and Marlene Gebhard, in St. Louis, Mo. (Mar. 2, 2019).

39. MO. REV. STAT. § 610 (2004).

40. Erich Schmitt, *Missouri Sunshine Law: Open Meetings and Records Law 1* (February 2019), <https://ago.mo.gov/docs/default-source/publications/missourisunshinelaw.pdf?sfvrsn=20>.

41. *See id.*

42. MO. REV. STAT. § 610.011 (2004) ("It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy.").

43. MO. REV. STAT. § 610.100(2)(1) (2016) ("All incident reports and arrest reports shall be open records.").

44. *See id.* § 610.100(3); *see also* State *ex rel.* Goodman v. St. Louis Bd. of Police Comm'rs, 181 S.W.3d 156 (Mo. Ct. App. 2005) (finding that only the "information specifically delineated in section 610.100.1(4) is considered an open record" and "trial court did not err in authorizing the [defendant] to close by redaction this information from the incident reports . . .").

45. *See Goodman*, 181 S.W.3d at 159–60 ("Section 610.100.1(4) reveals that an incident report consists of the following: "the date, time, specific location, name of the victim and immediate facts and circumstances" regarding an incident. Section 610.100.1(4). Only this information specifically delineated in section 610.100.1(4) is considered an open record pursuant to section 610.100.2.").

information they may deem valuable to understanding the full circumstances of their loved one's death. Arrest records can also be kept secret if the person arrested is not charged within thirty days of the arrest.⁴⁶

Law enforcement records created during an investigation into criminal activity are kept secret under the Sunshine Law until the investigation becomes inactive.⁴⁷ This includes footage from cameras worn or carried by police and cameras installed in their cars.⁴⁸ Investigations are considered inactive if "no further action will be taken by a law enforcement agency or officer for any of the following reasons": (1) the law enforcement agency decides not to pursue the case; (2) the statute of limitations to file criminal charges has expired or it has been ten years since the alleged crime happened, whichever is earlier; or (3) those who allegedly committed the crime have been convicted and there are no further opportunities for them to appeal or challenge that conviction.⁴⁹

This framework can be problematic for families seeking information. Under the first definition of "inactive," the Sunshine Law leaves the availability of public records almost solely at the discretion of the law enforcement agency. While there may be pressure, both internally and externally, to decide whether or not to charge an officer who has killed someone, law enforcement could artificially keep an investigation open for years. Under the second definition, deeming an investigation inactive based on the statute of limitations provides similar concerns because there is no statute of limitations to file criminal charges for murder in the first or second degree.⁵⁰ As a result, families could wait up to ten years before investigative reports become accessible.⁵¹ Even for charges of lesser degree homicide offenses, such as voluntary or involuntary manslaughter, families would still need to wait three years before the statute of limitations has run.⁵² As to the third definition, families cannot wait for an investigation to become inactive after the officer is convicted because

46. MO. REV. STAT. § 610.100(2)(3).

47. *Id.* § 610.100(2)(2) ("...mobile video recordings and investigative reports of all law enforcement agencies are closed records until the investigation becomes inactive.").

48. *Id.*

49. *Id.* § 610.100(1)(3).

50. MO. REV. STAT. § 556.036(1) ("A prosecution for murder, rape in the first degree, forcible rape, attempted rape in the first degree, attempted forcible rape, sodomy in the first degree, forcible sodomy, attempted sodomy in the first degree, attempted forcible sodomy, or any class A felony may be commenced at any time.").

51. *See id.*

52. *See id.* § 556.036(2)(1) ("...prosecutions for other offenses must be commenced within the following periods of limitation: (1) For any felony, three years, except as provided in subdivision (4) of this subsection"); *see also* MO. REV. STAT. § 556.023 (describing charge of "voluntary manslaughter" as a felony); MO. REV. STAT. § 556.024 (describing charge of "involuntary manslaughter" in the first degree as a felony); MO. REV. STAT. § 556.027 (describing charge of "involuntary manslaughter" in the second degree as a felony).

police are rarely, if ever, charged for excessive force, let alone convicted.⁵³

Additionally, law enforcement agencies can redact investigative reports that should otherwise be open if they think the reports contain information that could pose a danger to victims or others involved in an investigation, undermine an ongoing investigation, or disclose “techniques, procedures or guidelines for law enforcement investigations or prosecutions.”⁵⁴ Again, with this discretion to determine if content should be kept secret, law enforcement agencies can deprive families of the information they need for closure after the loss of loved ones.

The Sunshine Law does provide some hope for families seeking information that is otherwise kept secret under the law. First, a family member “may obtain a complete, unaltered, and unedited copy” of video or audio recorded by law enforcement of the killing by written request so long as the family member is a parent, sibling, or child of the deceased.⁵⁵ Though St. Louis City has yet to fit all SLMPD officers with body cameras, St. Louis County began a body camera program in January 2020, making access to video records a more valuable provision of the Sunshine Law in the coming years.⁵⁶ Additionally, a parent, sibling, or child can request in writing access to an “unaltered and unedited incident report” and additional otherwise closed records if they do so for the purpose of investigating a “civil claim or defense.”⁵⁷ Law enforcement is required to respond within thirty days of the request with the information requested.⁵⁸ If the law enforcement agency does not want to provide the information, it is the agency’s burden to file a motion in the state circuit court within thirty days of the request asking that the records stay closed. The agency

53. See Reuben Fischer-Baum, *Allegations of Police Misconduct Rarely Result in Charges*, FIVETHIRTYEIGHT (Nov. 25, 2014), <https://fivethirtyeight.com/features/allegations-of-police-misconduct-rarely-result-in-charges/>.

54. MO. REV. STAT. § 610.100(3).

55. *Id.* § 610.100(2)(4) (“Except as provided in subsections 3 and 5 of this section, a mobile video recording that is recorded in a nonpublic location is authorized to be closed, except that any person who is depicted in the recording or whose voice is in the recording, a legal guardian or parent of such person if he or she is a minor, a family member of such person within the first degree of consanguinity if he or she is deceased or incompetent, an attorney for such person, or insurer of such person, upon written request, may obtain a complete, unaltered, and unedited copy of a recording under and pursuant to this section.”).

56. See Lauren Trager, *News 4 Investigates: St. Louis County officers now wearing body cameras*, KMOV4 (Feb. 8, 2020), https://www.kmov.com/news/news-investigates-st-louis-county-officers-now-wearing-body-cameras/article_5b8829a8-4a14-11ea-9610-df8afd909a3d.html; see also Lauren Trager, *Body cams won't be outfitted on St. Louis City officers any time soon*, KMOV4 (Aug. 8, 2019) [hereinafter Trager, *Body Cams*], https://www.kmov.com/news/investigations/body-cams-won-t-be-outfitted-on-st-louis-city/article_1564e6de-ba2f-11e9-8680-8f062025507e.html (describing barriers to widespread use of body cameras with the SLMPD).

57. MO. REV. STAT. § 610.100(4).

58. *Id.*

must argue that the records' release would jeopardize the safety of "the victim, witness or other individual" or of the ongoing criminal investigation.⁵⁹ If law enforcement fails to respond to the request, families have standing to enforce the Sunshine Law provisions by filing a civil lawsuit and proving that the law enforcement agency or a particular officer knowingly or purposefully failed to provide the requested documents.⁶⁰

In practice, however, the Sunshine Law often fails to provide families with the information they need, as government compliance with public records requests made under the Sunshine Law is unlikely.⁶¹ In 2016, the State Auditor of Missouri estimated that around 65% of political subdivisions would not fully comply with public record requests based on its review of compliance.⁶² Little data exists today on the compliance rates with Missouri police departments. However, families interviewed for this Article noted that even with the help of legal counsel, they still have issues getting records from the SLMPD or other police departments.⁶³ The SLMPD has also been sued for failing to provide records of police misconduct under the Sunshine Law as recently as 2015.⁶⁴

While the Sunshine Law provides an enforcement mechanism in cases of noncompliance, the law is so dependent on having a lawyer to obtain enforcement that families may still find themselves without access to information. Families effectively must file a case in the state circuit court to enforce the law if the agency claims an exception because the records are part of an open investigation.⁶⁵ Worse, the circuit court can require payment of "reasonable and necessary costs and attorneys' fees" from the family unless the court finds that the agency's decision to keep the information secret was "substantially unjustified under all relevant circumstances."⁶⁶ Upon that finding, the court may require the law enforcement agency to pay the family's costs and attorney's fees.⁶⁷

The potential of being forced to pay the law enforcement agency's costs and attorney's fees may deter families from seeking enforcement of

59. *Id.*

60. *Id.* § 610.100(6).

61. Nicole Galloway, *Sunshine Law Review*, OFF. OF MO. ST. AUDITOR (Nov. 2016), <https://app.auditor.mo.gov/Repository/Press/2016124736280.pdf> ("We also estimate 2,686 of the 4,113 (65.3 percent) political subdivisions would not fully comply with public record requests.").

62. *Id.*

63. *See, e.g.*, Interview with Gina Torres, in St. Louis, Mo. (Dec. 15, 2018); Interview with Gina Torres, Toni Taylor, Rauchandia Robinson, Anthony Robinson, Marlene Gebhard, St. Louis, Mo. (Mar. 2, 2019).

64. *See* Chasnoff v. Mokwa, 466 S.W.3d 571, 585 (Mo. Ct. App. 2015) ("As the trial court determined, the [St. Louis Board of Police Commissioners'] conduct during the course of this extensive litigation establishes its knowing violation of the Sunshine Law.").

65. MO. REV. STAT. § 610.100(5)(6) (2016).

66. *Id.* § 610.100(6).

67. *Id.*

the Sunshine Law.⁶⁸ Lawyers can be costly and challenging to find, especially for the low-income families who disproportionately make up those killed by police.⁶⁹ Going to court to seek enforcement is also required when agencies fail to provide arrest records and incident reports under the Sunshine Law. In that context, the law enforcement agency can be subject to civil penalties ranging from \$1,000 to \$5,000.⁷⁰ Still, just to get the information they are entitled to under the law, families are often required to find an attorney to navigate the court system, creating a barrier to justice and information for those without means.

IV. IMAGINING A PATH FORWARD

My belief is that there needs to be someone in the police department who acts as a liaison Not the police that are involved in the shooting, but someone who is a go-to person for these families to say, “What do I do next?” “How do I get my body . . . my child’s or my brother’s or my sister’s?” “What do I need to do?”

- Marlene Gebhard, grandmother of Tyler Gebhard⁷¹

That goes in with them policing themselves. That needs to really change, too. They cannot investigate themselves.

- Toni Taylor, mother of Cary Ball⁷²

A. *Developing Standards for Law Enforcement Interactions and Sharing of Records with Surviving Families*

For the families I interviewed, the SLMPD was often involved in the death of their loved ones. Because of this, St. Louis families often must interact with SLMPD to obtain records. Today, the SLMPD does not have a “policy relative to sharing information with victim’s families.”⁷³ Instead, “[d]etectives, regardless of the unit they work in, keep in contact

68. See, e.g., HENRY COHEN, CONG. RESEARCH SERV., ORDER CODE 94-970, AWARDS OF ATTORNEYS’ FEES BY FEDERAL COURTS AND FEDERAL AGENCIES, 13 (Jun. 2008), <https://fas.org/spp/crs/misc/94-970.pdf> (describing the chilling effect awarding fees to federal agency defendants can have on plaintiff’s filing suits under Title VII of the Civil Rights Act of 1964).

69. Zaid Jilani, *95% of Police Killings in 2015 Occurred in Neighborhoods with Incomes Under \$100,000*, ALTERNET (July 8, 2015), <https://www.alternet.org/2015/07/95-police-killings-2015-occurred-neighborhoods-incomes-under-100000/?sc=fb>.

70. MO. REV. STAT. § 610.100(6) (2016).

71. Interview with Gina Torres, Toni Taylor, Rauchandia Robinson, Anthony Robinson, Marlene Gebhard, St. Louis, Mo. (Mar. 2, 2019).

72. *Id.*

73. Email from Michelle Woodling, St. Louis Metropolitan Police Department, to author (Apr. 25, 2019, 3:27 PM) (on file with the author).

with the victim’s families to the best of their ability and provide them with updates as they are available.”⁷⁴ One path forward is for the SLMPD and other law enforcement agencies to develop policies to both prevent killings and better support families in the face of killings.

In February 2019, the Institute for Innovation in Prosecution at John Jay College of Criminal Justice (IIP) released “The Prosecutor’s Role in Addressing Officer-Involved Fatalities And Critical Incidents: A Toolkit for Prosecutors and Communities, by Prosecutors and Communities.”⁷⁵ The Toolkit was created by a working group of community organizations, prosecutors, and family members of those killed by the police.⁷⁶ The Toolkit provides prosecutor’s offices with steps they should take at different stages following an officer shooting (i.e., immediately, within twenty-four hours, within forty-eight hours, within two weeks, and within four to six months).⁷⁷ For example, the Toolkit notes that the prosecutor’s office should have an established communications infrastructure that provides at least monthly updates to the family and public on the killing.⁷⁸

Organizations such as 21st Century Policing Solutions (21CPS) have worked with departments following police shootings to identify potential policies to prevent such shootings and to better address them when they happen.⁷⁹ For example, in the wake of the Sacramento Police Department’s fatal shooting of Stephon Clark,⁸⁰ 21CPS worked with California’s Department of Justice to review the Department’s “use of force policies, training, and practice” and write a report with recommendations.⁸¹ The recommendations are based on best practices of other police departments, such as the New Orleans Police Department, which has set timelines for reporting and investigations of officer shootings.⁸² The SLMPD and other police departments in the St. Louis area could take similar action and develop best practices to increase transparency and ensure that families receive information in a timely manner.

74. *Id.*

75. INST. FOR INNOVATION IN PROSECUTION AT JOHN JAY COLL. OF CRIMINAL JUSTICE, THE PROSECUTOR’S ROLE IN ADDRESSING OFFICER-INVOLVED FATALITIES AND CRITICAL INCIDENTS: A TOOLKIT FOR PROSECUTORS AND COMMUNITIES, BY PROSECUTORS AND COMMUNITIES (2019), <http://johnjay.jjay.cuny.edu/documents/Officer-Involved-Fatalities-Toolkit.PDF>.

76. *Id.* at 3–4.

77. *Id.* at 13.

78. *Id.*

79. *Current Work*, 21ST CENTURY POLICING SOLUTIONS, <https://www.21cpsolutions.com/current-work> (last visited Feb. 22, 2020).

80. See Christine Hauser, *Sacramento Man Fatally Shot by the Police in His Backyard*, N.Y. TIMES (Mar. 21, 2018), <https://www.nytimes.com/2018/03/21/us/stephon-clark-police-shooting.html?module=inline>.

81. *Id.*

82. CALIFORNIA DEP’T OF JUSTICE, SACRAMENTO POLICE DEPARTMENT: REPORTS AND RECOMMENDATIONS 44 (2019), <https://oag.ca.gov/system/files/attachments/press-docs/spd-report.pdf>.

B. *Changing Missouri Public Records Laws to Increase Compliance*

A second path forward is changing the Sunshine Law to better incentivize law enforcement and other government agencies to follow the law and provide information when families request it.

As discussed above, families can file a motion in circuit court to seek enforcement of the Sunshine Law. The Sunshine Law also allows an attorney general or prosecuting attorney to seek judicial enforcement of the law.⁸³ Individuals or agencies can face civil penalties of up to \$5,000 for willful violation of the Sunshine Law.⁸⁴ Additionally, a person who knowingly violates the Sunshine Law can be found guilty of a misdemeanor with penalties that include up to one year of imprisonment.⁸⁵ However, because families still have trouble obtaining information, Missouri could follow in the footsteps of other states and increase penalties for willful noncompliance with the Sunshine Law.⁸⁶

For example, prior to 2017, Florida made agencies pay attorney's fees automatically if a person brought a suit to enforce the state's public records law.⁸⁷ Given perceived abuse of the rule, the Florida legislature amended the law in 2017, removing the automatic awarding of attorney's fees and instead requiring a finding that the agency unlawfully withheld information.⁸⁸ The amended law also requires a party planning to file a claim to wait five days before commencing the lawsuit.⁸⁹

Missouri could make its public records laws similarly strong. By simply removing the potential for state agencies to be granted attorney's fees, the potential chilling effect on families seeking to enforce the Sunshine Law could be eliminated, and the state agency could be incentivized to comply with the Law.⁹⁰

Missouri could also explore the alternative enforcement mechanisms used in other states. Though uncommon, some state statutes provide that

83. See Schmitt, *supra* note 40, at 43.

84. MO. REV. STAT. § 610.100(6) (2016).

85. See *Id.* § 610.115 (“A person who knowingly violates any provision of section 610.100, 610.105, 610.106, or 610.120 is guilty of a class A misdemeanor.”); see also MO. REV. STAT. § 558.011(6) (2016) (“The authorized terms of imprisonment, including both prison and conditional release terms, are . . . [f]or a class A misdemeanor, a term not to exceed one year . . .”).

86. See Katrina Hull, *Violating government-access laws rarely results in punishment for the offenders*, REP.'S COMMITTEE (Summer 2003), <https://www.rcfp.org/journals/the-news-media-and-the-law-summer-2003/violating-government-access/> (describing penalties for violating public records laws in different states).

87. See Leonard Dietzen, III, *Governor Scott Signs Public Records Bill: Relief for Florida Agencies*, JD SUPRA, May 25, 2017, <https://www.jdsupra.com/legalnews/governor-scott-signs-public-records-13080/>.

88. See *id.*; see also FLA. STAT. § 119.12(1)(a) (2019) (“The agency unlawfully refused to permit a public record to be inspected or copied . . .”).

89. FLA. STAT. § 119.12(1)(b) (2019); see also Dietzen, *supra* note 87.

90. See COHEN, *supra* note 68 (discussing the chilling effect of awarding attorney's fees on plaintiffs filing civil lawsuits).

those who violate the public records law may be removed from office.⁹¹ In other states, like Minnesota, those who willfully violate the state's open records law may be subject to suspension without pay as well as removal from office.⁹²

C. *Developing Community-Based Alternatives to Hold Law Enforcement Accountable to Surviving Families*

Both of the above approaches depend on the participation of relevant police departments and/or prosecutor's offices. As criminology professor Samuel Walker has said, "[p]rosecutors work with police day in, day out, and typically they're reluctant to criticise them or investigate them."⁹³ It is unlikely that prosecutors will prosecute for failure to comply with public records laws following a police shooting, as prosecutors rarely even charge police officers for killing people.⁹⁴ Additionally, the St. Louis Circuit Attorney's Office has repeatedly been unable to obtain investigative reports from the FIU of the SLMPD to conduct its own review and investigation into police misconduct.⁹⁵ This reveals the serious challenge prosecutors face with holding police officers accountable following instances of fatal violence.

One alternative would be using an independent body or government agency to conduct investigations separate from the existing approaches by police and prosecutor's offices. An independent body could provide information directly to families while bypassing the conflicts of interest that arise with police departments and prosecutor's offices.⁹⁶ But while the creation of a new body may be preferable, it would likely include significant costs for a local government that regularly claims financial constraints.⁹⁷ However, the office of the coroner and St. Louis City's Civilian Oversight Board ("COB") provide two options already in existence.

With roots in medieval England, coroners are generally elected government officials responsible for the investigation of unexplained

91. See Hull, *supra* note 86.

92. MINN. STAT. § 13.09(b) (2018).

93. Jon Swain et al., *Ties that bind*, THE GUARDIAN, Dec. 31, 2015, <https://www.theguardian.com/us-news/2015/dec/31/ties-that-bind-conflicts-of-interest-police-killings>.

94. See Fischer-Baum, *supra* note 53.

95. See, e.g., Rebecca Rivas, *Prosecutor accuses police of obstructing investigation*, ST. LOUIS AM., Feb. 7, 2019, http://www.stlamerican.com/news/local_news/prosecutor-accuses-police-of-obstructing-investigation/article_d8af1024-2a74-11e9-95ef-67b17a771799.html.

96. See Paul MacMahon, *The Inquest and the Virtues of Soft Adjudication*, 33 YALE L. & POL'Y REV. 275, 278 (2015) ("Because of the intimate relationship between police and prosecutors, the criminal process is systematically likely to favor officers accused of misconduct, and charging decisions are veiled in secrecy.").

97. See, e.g., Trager, *Body Cams*, *supra* note 56 ("News 4 reached out to St. Louis Metropolitan Police Chief John Hayden. His office says he's also supportive of cameras, but also said it was just a matter of funding.").

deaths.⁹⁸ For the American colonists, this meant “convening an inquest jury to investigate any unexplained death.”⁹⁹ Today, many states have abolished coroners in favor of a medical examiner system.¹⁰⁰ Under the medical examiner system, medical professionals conduct their investigations privately rather than through an inquest jury or other public mechanism.¹⁰¹ Coroner inquests, on the other hand, are generally held in public view and operate separately from criminal or civil proceedings.¹⁰² While inquests do not necessarily result in prosecutions or civil liability, their search for truth could result in some benefit for families going through the grieving process. Specifically, they could help families seeking “a form of recognition for the significance of the death” by “expressing the value of the human life lost.”¹⁰³

Another option is the COB, which has the authority to conduct investigations “upon complaints by members of the public against members of the police department that allege misconduct involving excessive use of force”¹⁰⁴ The Board is made up of seven members who are appointed after nomination by the mayor and confirmation by the City’s Board of Alderman.¹⁰⁵ In reality, the SLMPD Internal Affairs division conducts all investigations.¹⁰⁶ The COB then reviews these reports to make its own determination as to the use of force.¹⁰⁷ Since the COB relies on the police department to conduct investigations, the organization provides little additional support for families seeking information. However, one recent change to increase the power of the COB has been the grant of subpoena powers, so that it can get information

98. MacMahon, *supra* note 96, at 281.

99. *See id.*

100. *See id.* at 282; *see also* CDC, DEATH INVESTIGATION SYSTEMS (2015), <https://www.cdc.gov/phlp/publications/coroner/death.html> (noting that only 14 states solely use a coroner-based system for death investigations).

101. MacMahon, *supra* note 98, at 283.

102. *See id.* at 276.

103. *Id.* at 296.

104. *See* MO. REV. STAT. § 590.653(2) (2016); *see also* *About the Civilian Oversight Board*, CITY OF ST. LOUIS, <https://www.stlouis-mo.gov/government/departments/public-safety/civilian-oversight-board/about.cfm> (last visited May 1, 2019).

105. Press Release, The City of St. Louis, Mo., Effective 6.5.2015: Bill Establishing Civil Oversight Board (June 5, 2015), <https://www.stlouis-mo.gov/government/departments/mayor/news/effective-civilian-oversight-board.cfm>.

106. Ryan Krull, *St. Louis' Civilian Oversight Board Almost Always Agrees with Internal Affairs*, RIVERFRONT TIMES (Apr. 2, 2018), <https://www.riverfronttimes.com/newsblog/2018/04/02/st-louis-civilian-oversight-board-almost-always-agrees-with-internal-affairs> (“Individuals who feel they’ve been a victim of police misconduct can file a complaint through a Joint Civilian Complaint Form with the board. The complaint is then forwarded to Internal Affairs, and Barton says it is Internal Affairs that “does all the initial investigation, collecting witness statements as well as audio, video and medical reports, and then they turn that information over to us.”).

107. *Id.*

on its own.¹⁰⁸ To further establish the Board’s investigative function, the city could raise or divert funding from other sources to the COB. The city is considering such a proposal for the Circuit Attorney’s Office, indicating that such a proposal is feasible.¹⁰⁹ As an independent body meant to provide citizen oversight of the SLMPD, the COB may be more effective if the institution serves as an independent source of information on killings by police.

D. Investing in Alternatives to Policing

Police are “licensed to kill.”¹¹⁰ The use of deadly force is embedded in their job description and increasingly permitted by the Supreme Court.¹¹¹ Yet, police are generally the primary government actors tasked with the provision of public safety. Given the inherently violent nature of policing, a separate approach to consider is to invest in alternative models of public safety and divert from the current system that results in so many civilian deaths.

This year, after significant organizing effort led by the Coalition Against Police Crime and Repression,¹¹² the city of St. Louis authorized \$500,000 in funding to launch a violence reduction program, one potentially viable alternative to policing.¹¹³ In August 2019, St. Louis

108. *St. Louis Aldermen Give Police Civilian Oversight Board Subpoena Power*, FOX2NOW ST. LOUIS (Apr. 17, 2018), <https://fox2now.com/2018/04/17/st-louis-aldermen-give-police-civilian-oversight-board-subpoena-power/>; see also St. Louis, Mo., Board Bill No. 233AA (2018) (amending Ordinance 69984, which established the City of St. Louis COB, to empower the COB to “issue subpoenas, to compel the appearance of witnesses, produce documents, recordings and other evidence”).

109. See Bott, *supra* note 36.

110. Raoul Shah, *Licensed to Kill? An Analysis of the Standard for Assessing Law Enforcement’s Criminal Liability for Use of Deadly Force*, 39 MITCHELL HAMLINE L.J. PUB. POL’Y & PRAC. 1, 1 (2018).

111. See Marcus R. Nemeth, *How Was That Reasonable? The Misguided Development of Qualified Immunity and Excessive Force by Law Enforcement Officers*, 60 B.C. L. REV. 989, 1016 (2019) (“[The] excessive force doctrine and qualified immunity doctrine . . . increasingly afford police the benefit of the doubt Furthermore, the [Supreme] Court has provided a way for police to make rash decisions and simultaneously hide behind the shield of qualified immunity in almost all deadly force occurrences.”); see also, e.g., *Kisela v. Hughes*, 138 S.Ct. 1148, 1162 (2018) (Sotomayor, J. dissenting) (“[The majority’s] decision is not just wrong on the law; it also sends an alarming signal to law enforcement officers and the public. It tells officers that they can shoot first and think later, and it tells the public that palpably unreasonable conduct will go unpunished.”).

112. The Coalition Against Police Crime and Repression provides support for families in the immediate aftermath of killings by police and advocates for policy goals including ending police crimes and abuse, ending the criminalization of a generation, and exposing the prison industrial complex. See CAPCR-STL, <https://www.capcr-stl.org/> (last visited Nov. 26, 2019).

113. See Rachel Rice, *St. Louis Mayor Calls for Emergency Launch of Violence Prevention Program*, ST. LOUIS POST-DISPATCH (Aug. 23, 2019), https://www.stltoday.com/news/local/crime-and-courts/st-louis-mayor-calls-for-emergency-launch-of-violence-prevention/article_734c38ff-0773-5d34-9f94-57f09408f41c.html.

Mayor Lydia Krewson began the process of appropriating additional funding to open a Cure Violence center.¹¹⁴ Cure Violence is “a teaching, training, research and assessment NGO focused on a health approach to violence prevention” that provides one alternative model to public safety.¹¹⁵ The Cure Violence model has been used in fifty different communities across the United States, with “reductions in violence within the first year ranging from 40-70% and greater reductions in subsequent years.”¹¹⁶ Assuming the program is successful, St. Louis should consider adopting these efforts across the city as soon as possible to minimize violence and the need for interaction with the police.

CONCLUSION

Families whose loved ones have been killed by the police deserve to know the circumstances of their loved ones’ death. In theory, Missouri’s Sunshine Law guarantees this right to information for families. In reality, families face many barriers to accessing this information. These barriers could be lifted with increased investment in compliance with the Sunshine Law, oversight mechanisms to hold law enforcement accountable, and public safety alternatives.

It is important to recognize, however, that unfettered public access to government records can have negative consequences. Members of the press often rely heavily on public records to tell their stories.¹¹⁷ While use of public records may often “help reporters spotlight problems and initiate change,”¹¹⁸ media has a longstanding problem of exhibiting bias against racial minorities.¹¹⁹ After the killing of Michael Brown—a case in which journalists accused the local government of obstructing their access to public records¹²⁰—some media sources branded Brown as a “thug” and blamed him for his own death because of their construction of his

114. *Id.*

115. CURE VIOLENCE, <http://cureviolence.org/the-model/about-us/> (last visited May 2, 2019).

116. *Id.*

117. See, e.g., Denise-Marie Ordway, *How They Did It: Public Records Helped Reporters Investigate Police Abuse Of Power*, JOURNALISTS RESOURCE (Mar. 5, 2019), <https://journalistsresource.org/tip-sheets/reporting/elkhart-public-records-investigation/> (describing how journalists used public records to inform news articles about police conduct in Elkhart, Indiana).

118. *Id.*

119. See John Wihbey, *Racial Bias And News Media Reporting: New Research Trends*, JOURNALIST’S RESOURCE (May 20, 2015), <https://journalistsresource.org/studies/society/news-media/racial-bias-reporting-research-trends/> (Describing how, in a review of media analysis, “numerous studies documented the high rate at which persons of color were typically portrayed as violent or dangerous in newspapers and television”).

120. Daniel A. Medina, *In Ferguson, Journalists Accuse The Local Government Of Obstruction*, QUARTZ (Sept. 29, 2014), <https://qz.com/273052/in-ferguson-journalists-accuse-the-local-government-of-obstruction/>.

identity.¹²¹ This portrayal can negatively impact not only families who see their loved ones vilified and dehumanized in the news, but also judicial proceedings and the ways the public understands police shootings.¹²² Open access can also provide opportunities for potential employers, landlords, or the general public to stigmatize those with criminal records, evictions, or other government records.¹²³

The case in St. Louis is different, however. The Sunshine Law, as it stands, is narrowly tailored to provide information only to those seeking to file a lawsuit.¹²⁴ Those interviewed for this research only offered one potential expansion: that the information should be provided generally to families seeking information in situations of fatal state violence, not only to those preparing a civil lawsuit.¹²⁵

As Gina Torres told me, the loss of a loved one to state violence is something you would “never wish . . . on anybody’s family.”¹²⁶ The local and state governments of Missouri can prevent the need for families to get information on their loved ones’ death by never allowing the deaths to happen in the first place. More than 1,000 people are killed by the police every year in the United States, with Black people as the most likely targets.¹²⁷ No family will ever be safe from the loss of a loved one as long as this trend continues.

It is my prayer that what happened to my cousin Ronnie never happens to another person. Like Gina, I hope that no other family has to experience the isolation and heartache of such a loss and the subsequent reality of being ignored by the very government that is supposed to protect you. However, until we transform our system of government and reach that future state of the world, law enforcement and all government agencies

121. See Bryan Adamson, *Thugs, Crooks, and Rebellious Negroes: Racist and Racialized Media Coverage of Michael Brown and the Ferguson Demonstrations*, 32 HARV. J. RACIAL & ETHNIC JUST. 189, 229 (2016) (“Like Brown, [Trayvon] Martin was branded a thug and blamed for his own death. As news reporter Geraldo Rivera scolded, “[y]ou dress like a thug, people are going to treat you like a thug.”) (internal citations omitted).

122. *Id.* at 192–93 (explaining that racist media portrayals potentially influenced grand jurors in the judicial proceedings emerging from the Michael Brown killings, and negatively shaped national discourse on the killing).

123. See, e.g., Tarra Simmons, *Transcending the Stigma of a Criminal Record: A Proposal to Reform State Bar Character and Fitness Evaluations*, 128 YALE L. J. F. 759, 760 n.4 (2019) (citing Mark T. Berg & Beth M. Heubner, *Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism*, 28 JUST. Q. 382, 405 (2011)); see also Sandra Park, *Unfair Eviction Screening Policies Are Disproportionately Blacklisting Black Women*, ACLU WOMEN’S RIGHTS PROJECT (Mar. 30, 2017, 1:15 PM), <https://www.aclu.org/blog/womens-rights/violence-against-women/unfair-eviction-screening-policies-are-disproportionately>;

124. MO. REV. STAT. § 610.100(4) (2019).

125. Interview with Gina Torres, Toni Taylor, Rauchandia Robinson, Anthony Robinson, Marlene Gebhard, in St. Louis, MO (Mar. 2, 2019).

126. Interview with Gina Torres, in St. Louis, MO (Dec. 15, 2018).

127. MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/> (last visited May 2, 2019).

involved in the killings of our loved ones should end their silence and shed light on one of the darkest actions of our government and often worst instances in surviving families' lives.