

Do You Know Why *You* Stopped *Me*?: Information and Injury in the Fight Against Racialized Policing

BRETT GRAHAM*

“Data is a precious thing and will last longer than the systems themselves.”
—Sir Timothy Berners-Lee, inventor of the World Wide Web

TABLE OF CONTENTS

INTRODUCTION	265
I. THE LANDSCAPE	267
A. <i>Behind Undocumented Encounters</i>	268
B. <i>The Scope of the Problem</i>	270
C. <i>Current Efforts at Data Collection</i>	271
II. THE INJURY	273
III. THE RECEIPTS	276
A. <i>Test Cases</i>	276
B. <i>The Case for Stop Receipts</i>	279
C. <i>The Case Against Stop Receipts</i>	280
IV. CONCLUSION	281

INTRODUCTION

In many ways, the fight against racialized policing is a fight over information—and so far, for those interested in reform, it has been David against Goliath.

Take, for instance, the complicated and still-nascent story of body-worn cameras. It goes something like this: In 2014, owing largely to a statement made by the family

* J.D., Georgetown University Law Center, 2021. B.A., University of Michigan—Ann Arbor, 2018. Articles Editor, Georgetown Journal of Law and Modern Critical Race Perspectives, 2020-21. I would like to express my profound thanks to the incredible staff at MCRP for their diligent work in preparing this piece for publication. Additionally, given the subject matter of this Note, I must recognize my immense privilege, as a cisgender white man who works in a field that is too often defined by institutional barriers and social stratification. I strive to continue writing, thinking, and researching in ways that ensure that this privilege erodes and, eventually, disappears. © 2022, Brett Graham.

of Michael Brown,¹ an 18-year-old Black man fatally shot by Officer Darren Wilson in Ferguson, Missouri, police departments across the country began strapping cameras to their officers' chests.² The idea was that having all of these law enforcement interactions on video would promote transparency, accountability, trust, and civility.³ Observers and scholars celebrated this revolutionary development. They had finally answered the age-old question, "Who watches the watchers?"⁴

Then, roughly six years later, Officer Derek Chauvin's body-worn camera would be "on and activated" for the nine minutes that he spent kneeling on a Black man's neck.⁵ Footage from that camera would not see the light of day until months after George Floyd had become a household name. Even then, its availability depended upon a contentious court order.⁶ So much for accountability and civility. Some commentators began to stir, realizing that their revolutionary development had not been all that revolutionary—after all, the "vast majority of [body-worn camera] footage never gets seen."⁷ Countless jurisdictions reported incidents where cameras had simply been turned off;⁸ and even for the footage that was properly recorded and stored, access depended on navigating a complex web of state and local policies.⁹

But lack of access was not the only Achilles heel of the body-worn camera scheme. It also suffered from the fact that inherent to its very concept is an understanding of injury that is, as this Note will argue, outdated. Moreover, it functions to keep the public—and particularly, communities of color—woefully under-informed about how law enforcement actually functions in America.

Solving the problem of racialized policing must start with solving the problem of systemic under-information about policing. Embedded in the logic of the body-

1. German Lopez, *Michael Brown's family said police should adopt body cameras. They're right.*, VOX (Nov. 14, 2014, 10:04 AM), <https://www.vox.com/2014/8/16/6023481/michael-mike-brown-ferguson-body-cameras>.

2. Justin Nix, Natalie Todak & Brandon Tregle, *Understanding Body-Worn Camera Diffusion in U.S. Policing*, POLICE QUARTERLY 2 (2020).

3. *See id.*

4. Mitchell Zamoff et al., *Who Watches the Watchmen: Evidence of the Effect of Body-Worn Cameras on New York City Policing* (2019), https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3770333_code1334789.pdf?abstractid=3490785&mirid=1&type=2.

5. Louise Matsakis, *Body Cameras Haven't Stopped Police Brutality. Here's Why*, WIRED (June 17, 2020, 12:41 PM), <https://www.wired.com/story/body-cameras-stopped-police-brutality-george-floyd/>.

6. *Id.*

7. Rob Verger, *Police body cameras were supposed to build trust. So far, they haven't.*, POPULAR SCIENCE (June 10, 2020, 8:00 PM), <https://www.popsoci.com/story/technology/police-body-cameras/>.

8. Megan Cassidy, *San Francisco police turned off body cameras before raid on journalist. memo says*, S.F. CHRONICLE (June 18, 2020, 5:27 PM), <https://www.sfchronicle.com/crime/article/San-Francisco-police-turned-off-body-cameras-15349795.php>; Tom Latek, *Beshear: 'Unacceptable' officers had body cameras turned off when Louisville man was fatally shot by police*, N. KY. TRIBUNE (June 2, 2020), <https://www.nkytribune.com/2020/06/beshear-unacceptable-officers-had-body-cameras-turned-off-louisville-man-fatally-shot-by-police/>; Phillip Jackson, *TBI report reveals when MPD officers turned off cameras before officer-involved shooting*, MEMPHIS COM. APPEAL (Sept. 20, 2019, 6:34 PM), <https://www.commercialappeal.com/story/news/2019/09/20/tbi-report-memphis-police-officers-turned-body-cameras-off-before-shooting-martavious-banks-sep-2018/2379112001/>.

9. *See Verger, supra* note 7.

worn camera is the idea that the public only has an interest in reviewing and understanding those police-civilian interactions that go egregiously wrong. But if you are trying to learn how the game of football is played, fast-forwarding through everything that is not a touchdown or a turnover is not a great strategy. In prioritizing these obvious, individual, tangible injuries—like being put in a chokehold, or cursed at, or harassed—body-worn cameras erroneously imply that these are the *only* injuries worth recognizing. The effect is that with every unrecorded, ostensibly unimportant stop, the information gap grows wider and wider for the communities that are crying out for data the most: communities of color.

This Note will proceed as follows: Part I will discuss the landscape of the problem, including the origins of a system that entertains such a narrow conception of injury and produces such minimal data. It will also begin to sketch out the impressive scope of the problem. Part II will dive further into the theoretical switch, from understanding injury as individual and tangible to understanding it as collective and informational. Part III will introduce the concept of a stop receipt as a means of flipping the logic behind body-worn cameras on its head, in terms of both access and theory. Part IV will briefly conclude.

I. THE LANDSCAPE

The fact that not all encounters between civilians and police officers are documented is somewhat common knowledge. Of course, when someone double parks, there is a ticket on their windshield when they return to their parking space. When there is an arrest, someone takes a mug shot. When there is a drug bust, there is a warrant on file somewhere. For the purposes of this Note, these scenarios are referred to as “documented” encounters with elements of law enforcement. It follows, then, to ask what are “undocumented” encounters?

The most familiar illustrations of an undocumented encounter come by way of cultural tropes that show them as harmless, or even positive. Most Americans would recognize the scene of an attractive motorist who escapes a speeding ticket by means of tears or flirtation, or the neighborly officer who shows up at a noisy party and chooses to “let it slide” with an informal warning. These interactions disappear without a trace, as they are meant to (otherwise, they would not be funny and light-hearted). *But what if these episodes were not as innocuous as they seemed?*

Suppose, for instance, that a study came out reporting that for every 100 traffic stops where the driver was blonde and beautiful, only five resulted in a ticket. The community that had an interest in promulgating a set of traffic laws may have an interest in curtailing the gorgeous people now wreaking havoc on their roads, or in quieting the less-than-professional intentions of the officers who pull them over. Then, consider the difference of experience between the household that receives a friendly warning to lower the music when it hosts its Fourth of July barbecue and the household down the road that is charged with violation of a local ordinance. Only the latter is formally injured, but both encounters are important if you are trying to formulate an opinion about enforcing noise control.

Ultimately, both documented and undocumented encounters with civilians are essential to understanding police behavior because both are instances in which social control is exerted. Even the formalist, prone to distinguishing between action and inaction at every turn, would struggle to support the idea that only those encounters that end in something formal, like a ticket, are worth studying. Putting the nature of this injury aside for the moment,¹⁰ this Part endeavors to lay out the landscape of how encounters between civilians and police officers are and are not monitored by (a) examining why so many go undocumented, (b) making an educated guess about the scope of undocumented encounters, and (c) discussing the current state of data collection efforts around the United States.

A. *Behind Undocumented Encounters*

In an oft-quoted passage from the Supreme Court's seminal case of *Terry v. Ohio*, Chief Justice Earl Warren notes:

Street encounters between citizens and police officers are incredibly rich in diversity. They range from wholly friendly exchanges of pleasantries or mutually useful information to hostile confrontations of armed men involving arrests, or injuries, or loss of life. Moreover, hostile confrontations are not all of a piece. Some of them begin in a friendly enough manner, only to take a different turn upon the injection of some unexpected element into the conversation. Encounters are initiated by the police *for a wide variety of purposes, some of which are wholly unrelated to a desire to prosecute for crime.*¹¹

What Chief Justice Warren could not have known was that his statement would become even truer with the subsequent several decades of development in American policing.

Here, a quick note about terminology. None of the following phrases defined by themselves are central to the purposes of this Note, but a brief discussion of their interrelation makes efficient work of summarizing the major trends from the last seventy years of American policing:

- “Reform era policing” extends from shortly after the turn of the century into the 1970s and was defined by a departure from the nineteenth-century practice of using early police as “adjuncts to local political machines.”¹² Major changes included an increase in department autonomy, centralization of authority within departments, and the depoliticization of their work. Those in charge promoted distance between the police and communities, “in the interests of ensuring impartiality and avoiding corruption,” sometimes even prohibiting officers from talking to citizens except in the line of duty.¹³

10. See *infra* Part II.

11. *Terry v. Ohio*, 391 U.S. 1, 13 (1968) (emphasis added).

12. Seth W. Stoughton, *Principled Policing: Warrior Cops and Guardian Officers*, 51 WAKE FOREST L. REV. 611, 621 (2016) (citing ROBERT M. FOGELSON, *BIG CITY POLICE* 13–14 (1977)).

13. Debra Livingston, *Police Discretion and the Quality of Life in Public Spaces*, 97 COLUM. L. REV. 551, 567 (1997) (citing Mark Harrison Moore, *Problem-solving and Community Policing*, in *MODERN POLICING* 99, 119–20 (Michael Tonry & Norval Morris eds., 1992)).

- “Rapid response policing” refers to a model that emerged concurrent to the reform era, but which resulted more from the development of technologies that made it possible (e.g. the telephone, patrol cars, etc.) than a desire to root out corruption.¹⁴ The model is based around an emphasis on rapid response to 9-1-1 calls and the resolution of the subsequent criminal case—think, an episode of *Law & Order*. The crime at the beginning of the episode is what sets everything in motion.¹⁵
- “New policing” dates from the 1970s and 1980s and succeeds the reform era. There are various models, but for the most part they share (1) a focus on the problems of specific neighborhoods rather than applying the same policing tactics across a jurisdiction, (2) the incorporation of increased partnership with citizens in doing police work, (3) an emphasis on low-level offenses, and (4) a desire to prioritize prevention of future occurrences of crime.¹⁶
- “Community policing” is a general term that applies to strategies which focus on developing partnerships between the community and the police. It is a central element of, but distinct from, new policing. With community policing often comes “more officers walking a beat, regular community outreach meetings, or more authority vested in the beat cop as opposed to centralized police management.”¹⁷

Thinking of informal, undocumented encounters with civilians as an important piece of the picture that is police behavior, then, is a fairly new phenomenon. Before the reform era, most Americans would not be able to recognize their local police department. In fact, the same might be said in many cases for the period during the reform era (considering the fact that some departments would so actively discourage informal contacts). Most familiar today is the rapid response model, but even that conception of how the police operate is outdated and insufficient, because it does not account for new policing strategies that have become staples of law enforcement all across the country. Where police officers were once encouraged to maintain a formal distance, they are now encouraged to consistently engage with and form partnerships in the community. Where they were once tasked with resolving individual instances of crime when they arose, they are comparatively more interested in low-level offenses and the maintenance of a general sense of order in their jurisdiction. Where there was an institutional goal of maintaining honesty and impartiality, there is an institutional concern with the proactive prevention of future crimes.

In the world of reform era and rapid response policing, the idea behind body-worn cameras makes perfect sense. Police kept their distance and interactions for the sake of interactions were rare if they happened at all, so why bother scrutinizing anything other than the chase or the arrest or the altercation? But as these models of

14. See Alafair Burke, *Unpacking New Policing*, 78 WASH. L. REV. 985, 988–89 (2003).

15. See *id.*

16. See *id.* at 992–96; see also GREGORY F. TREVERTON ET AL., MOVING TOWARD THE FUTURE OF POLICING 21–23 (2011).

17. Rachel E. Barkow, *The New Policing of Business Crime*, 37 SEATTLE U. L. REV. 435, 436 (2014).

policing faded, undocumented police-civilian encounters were thought of as increasingly useful, or even essential, to the project of securing a community.

With new policing and community policing, officers are trained to see value in stopping people, even if they are not sure that they are able to issue a ticket; in initiating voluntary encounters with store owners or passersby; in using their newfound discretion to police with broad strokes rather than with careful attention. There is a disconnect, then, in the fact that nothing about the way we conceive of *documenting* police-civilian encounters changed to coincide with this new version of *doing* police work. The result is a system where we record everything about a simple parking ticket, and hardly anything about the seemingly innocent but harmful ways in which police officers interact with people of color in their communities to exert social control. As the next section will show, this failure has transformed what was once a simple gap in understanding into quite the chasm.

B. *The Scope of the Problem*

Police agencies traditionally keep “very limited records about stops.”¹⁸ This is because, generally speaking, they only maintain records of arrests, warrants, and searches that result in seizures for use in civil and criminal litigation.¹⁹ Consider as well that whether an interaction results in documentation is often a function of an officer’s discretion. Just as “[n]o [guidelines] or rigid directive can tell officers to arrest every time they witness a violation of law . . . [or] never to arrest,”²⁰ nothing can tell them when to resolve an issue formally and when to do so informally.

Put simply, it is difficult to discuss the scale and breadth of undocumented police-civilian encounters for the obvious reason that they go undocumented. One audit, performed in Oakland, California, estimated that as many as 70% of all motor vehicle stops went unreported.²¹ Similarly, a study of the New Jersey Turnpike found that either no report was available, or the race of the driver was flat out missing from the data in 69% of interactions with drivers.²² In Richmond, Virginia, data was nowhere to be found for a much humbler, but still unfathomable, 36% of stops.²³

Perhaps the most recent anecdote of evidence on this question comes from New York City in 2011. There, in a survey of 685,724 instances of stop-and-frisk, 30% or more of cases (roughly 205,500) went entirely undocumented.²⁴ That is, the officer

18. Marc L. Miller & Ronald F. Wright, *The Black Box*, 94 IOWA L. REV. 125, 185 (2008).

19. See Samuel R. Gross & Katherine Y. Barnes, *Road Work: Racial Profiling and Drug Interdiction on the Highway*, 101 MICH. L. REV. 651, 656 (2002).

20. SKOLNICK FYFE, ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE 120 (2010).

21. Jeffrey Grogger & Greg Ridgeway, *Testing for Racial Profiling in Traffic Stops from Behind a Veil of Darkness*, 101 J. AM. STAT. ASS’N 878, 880 (2006).

22. *Id.* (citing John Lamberth, *Revised Statistical Analysis of the Incidence of Police Stops and Arrests of Black Drivers/Travelers on the New Jersey Turnpike Between Exits or Interchanges 1 and 3 From the Years 1988 Through 1991* (1994)).

23. *Id.* (citing Michael R. Smith & Geoffrey P. Alpert, *Searching for Direction Courts, Social Science, and the Adjudication of Racial Profiling Claims*, 19 JUST. Q. 673 (2002)).

24. Bruce Green, *Urban Policing and Public Policy— The Prosecutor’s Role*, 51 GA L. REV. 1179, 1182-83 (2017) (citing MICHAEL D. WHITE & HENRY F. FRADELLA, STOP AND FRISK: THE USE AND ABUSE OF A CONTROVERSIAL POLICING TACTIC 91 (2016)).

involved made no record of the encounter. Singular and specific as this data point may be, even if the ratio were just half that, it would account for a staggering percentage of police-civilian encounters. Translating it onto widely cited numbers from 2018 would mean that approximately 9 million encounters go undocumented every year.²⁵ This would also translate to around 7,500 undocumented traffic stops every day.²⁶

Though examples from major cities like New York City and Oakland are the most readily available,²⁷ it would be premature to infer that this is an entirely urban phenomenon. In the mid 2000s, for instance, in a review of all motor vehicle stops in the state of West Virginia, law enforcement personnel estimated that for every documented stop, there was one that went undocumented.²⁸ None of these figures, though, even attempt to account for voluntary interactions between law enforcement and civilians and how prevalent those voluntary interactions might be.²⁹

It bears reiterating that these are nothing more than rough estimates, and no one can know the scale of undocumented police encounters until something is done to begin accounting for them. At present, conservative thinking would point toward at least several millions of interactions every year and thousands every day where the public at large is blind to law enforcement's behavior.

C. Current Efforts at Data Collection

There has been no lack of calls in the past several decades for the expansion and standardization of police stop data.³⁰ Though some have succeeded, none have fundamentally corrected the underlying issue or shifted the status quo in a meaningful way. Some exceptional non-profits have pioneered efforts in this vein,³¹ but the fact

25. Erika Harrell & Elizabeth Davis, *Contacts Between Police and the Public, 2018*, BUREAU JUST. STAT. (Dec. 2020), <https://www.bjs.gov/content/pub/pdf/cbpp18st.pdf>.

26. *Findings*, STANFORD OPEN POLICING PROJECT, (last accessed Nov. 11, 2021), <https://openpolicing.stanford.edu/findings/>.

27. Al Baker, *City Police Officers Are Not Reporting All Street Stops, Monitor Says*, N.Y. TIMES (Dec. 13, 2017), <https://www.nytimes.com/2017/12/13/nyregion/nypd-stop-and-frisk-monitor.html> (“... the department found that required stop reports were only filled out in 13 of 50 arrests, meaning they were undercounted in 74 percent of arrests”). These cities are particularly prone to creating and publicizing stop data by way of various and sundry lawsuits, court-appointed monitors, and investigations. *Id.*

28. Larry L. Rowe, *West Virginia Race Relations at the Turn of the 21st Century*, 107 W. VA. L. REV. 637, 669 (2005) (“There are about 70,000 warnings or citations issued annually, meaning that there are about an equal number without documentation.”).

29. Miller & Wright, *supra* note 18 (“Most police agencies keep no records about voluntary conversations with citizens. . .”). I would note here, though it should be the subject of much more detailed research and analysis, that these so-called “voluntary” interactions may be of particular import to discussing the relationship between people of color and law enforcement, where there is an incentive on the part of the police to get information and Black or Hispanic individuals may be compelled to comply and engage, so as to appear non-threatening and ensure their own safety.

30. For instance, the Traffic Stops Statistics Study Act of 1998 became the Traffic Stops Statistics Study Act of 1999, which became the Traffic Stops Statistics Study Act of 2000—none of them passed. All were introduced by Rep. John Conyers (D-MI).

31. *See, e.g.*, STANFORD OPEN POLICING PROJECT <https://openpolicing.stanford.edu/> (last visited Nov. 11, 2021); CENTER FOR POLICING EQUITY <https://policingequity.org/> (last visited, Nov. 11, 2021).

Furthermore, even where data collection is mandatory, there are significant questions about how these laws function in practice. In New York City, officers are required to fill out a UF-250 stop-and-frisk form after each stop, making a record of demographic characteristics of the suspect, the time and location, and the rationale for the stop.³⁷ These forms, however, include no identifying information about the officer completing it.³⁸ There is widespread speculation that a large number of stops go undocumented. Perhaps most damning is the fact that it is entirely within an officer's discretion to determine whether an encounter qualifies as a "stop" at all. Noticeably, the information that is most rarely provided for by state law is that which identifies the police officer involved, usually by name or badge number. Only four states—California, North Carolina, Connecticut, and Kansas—require it.³⁹

So, while robust data collection efforts in states like California deserve to be celebrated and encouraged, they are more akin to putting a Band-Aid on a bullet wound than actually treating the problem. If the communities that are most victimized by abuses of police power are to get any sort of accurate and complete picture as to how it operates, a more fundamental change is necessary. Part II will expand on the theory that would support such a fundamental change.

II. THE INJURY

Thousands of pages of critical race theory have revolved around a redefinition or expansion of the concept of injury.⁴⁰ Generally, this quest to "name the injury" identifies systems of subordination, and how they are perpetuated to sanction harmful results to people of color.⁴¹ Some refer to "spirit injury," a type of combined physical, emotional, and spiritual trauma.⁴² While these veins of scholarship are useful in understanding how the law interacts with people of color, they are largely unnecessary to the imposition of a system that would account for undocumented encounters. Rather, a two-part, far less revolutionary move would empower people of color to properly monitor and begin reforming the system of racialized policing—instead of thinking only about individual, tangible injuries, the system needs to account for collective, informational injuries.

Imagine that, as you walk out of the grocery store to your car, you notice a small yellow ticket tucked under one of your windshield wipers. You could have sworn that you were parked legally, and you cannot quite figure out why, but the city is

37. Sharad Goel et al., *Precinct or Prejudice? Understanding Racial Disparities in New York City's Stop-and-Frisk Policy*, 10 ANNALS APPLIED STAT. 365, 368 (2016), projecteuclid.org/download/pdfview_1/euclid.aos/1458909920.

38. *Id.*

39. See NYU Policing Project, *supra* note 32.

40. See generally MARI J. MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT (1993).

41. See Daniel G. Solorzano & Tara J. Yosso, *Maintaining Social Justice Hopes Within Academic Realities*, 78 DENV. U. L. REV. 595, 599 (2001) (discussing the pedagogy of Paulo Freire, which begins with "naming the injury").

42. E.g., Adrien K. Wing & Sylke Merchan, *Race, Ethnicity, and Culture: Spirit Injury from Bosnia to Black America*, 25 COLUM. HUM. RTS. L. REV. 1 (1993); Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerprinting as the Law's Response to Racism*, 42 U. MIAMI L. REV. 127 (1987).

now demanding one hundred of your hard-earned dollars to make up for the violation. Both logic and societal norms of fairness (some might even say due process) dictate that the piece of paper include certain information, like your license plate number, the date, the location, the issuing officer, where and when you can find more information online, the amount you owe, and the date by which you need to have paid it. It is logical and fair to provide you this information because you have suffered a harm—it would be patently unfair to just take the money from your bank account without any notification. How would you know not to park there in the future? What if you decide to contest the ticket? And what if you want to keep it for your personal records?

The defect of the present system of collecting police data, which allows for millions of police-civilian interactions to occur every year in the nation's blind spot, is rooted in the fact that it takes two elements that are usually *sufficient* to establish injury and makes them *necessary* prerequisites for anyone to even look for one. In the case of your parking ticket, your injury is recognized because it (1) falls directly on you and (2) can be expressed as a concrete value—100 dollars. In the case of an undocumented stop, by contrast, the injury (1) falls on a broad class of people (that is, anyone trying to understand police behavior and practices) and (2) is more abstract.

But these differences should not be any reason for the latter injury to go unrecognized. Shared, abstract, informational harm is no stranger to the legal system. In the late 1960s and early 1970s, laws like the National Environmental Policy Act (NEPA), the Freedom of Information Act (FOIA), and the Federal Election Campaign Act (FECA), as well as regulations from the Occupational Safety and Health Administration (OSHA) and the Food and Drug Administration (FDA), granted the public rights to a wide variety of information about maintenance of the environment, political campaign spending, chemicals in the home, and the operation of government. Each of these developments, in some way or another, recognized that certain segments of the government lacked an incentive to disclose information on their own, based on perceived self-interest or resistance to oversight.

Take, for example, the seminal Supreme Court case on informational injury. In *Federal Election Commission v. Akins*, a group of voters attempted to persuade the FEC that the American Israel Public Affairs Committee (AIPAC) qualified as a political committee under the meaning of FECA.⁴³ Without this classification, AIPAC would be under no obligation to register with the FEC, keep names and addresses of its contributors, record the purposes and amounts of disbursements, nor to file annual reports of its political spending.⁴⁴ Writing for six, Justice Breyer rejected arguments that the voters had brought only a “generalized grievance,” and found an injury in fact sufficient to support standing.⁴⁵

43. *Federal Election Comm'n v. Akins*, 524 U.S. 11, 15 - 16 (1998).

44. *Id.* at 14–15.

45. *Id.* at 23-26.

In *Akins*, then, the plaintiffs were not required to show that their injury was individual, nor that it was tangible.⁴⁶ The interest they asserted was widely shared and did not tie to any particular set of facts or events. *Akins* asserted that he held “views often opposed to those of AIPAC,”⁴⁷ but he did not have to show that the withholding of information was detrimental to him in the context of trying to win a particular political race. Presumably, the suit would have been equally successful (on standing grounds, at least) had it been brought by a voter residing in a district where AIPAC was uninterested and uninvolved.

The lesson to be drawn from *Akins* is not in *how* the right to information was established,⁴⁸ but that it was established and understood at all. Not every undocumented campaign contribution or government report coincides with corruption or wrongdoing. Similarly, not all undocumented police encounters coincide with civil rights violations, harassment, discrimination, or outright violence against people of color (though, without a doubt, some percentage of them do). And yet, for one of these issues, the law recognizes a collective interest in information. For the other, it turns a blind eye. The result is that, as to the former, the public can understand the world around them and how government officials behave in practice; as to the latter, the public operates in the dark. Framed in this way, expecting policymakers attempting to reform law enforcement to succeed with the existing data is like asking a government watchdog to provide meaningful oversight for an agency while only having access to every third policy development or press release.

In reality, the only thing that separates communities of color in their efforts to better understand and legislate policing from the electorate in its efforts to better understand and legislate campaign finance is that the law applies the concept of injury to one and not the other. This is especially problematic for communities of color—and Black communities, in particular—in light of the fact that they face no shortage of serious, structural harms and challenges in their interactions with the police. People of color are chronically over and under-policed.⁴⁹ They experience stops and the use of force at a rate disproportionately higher than others.⁵⁰ And a person of color is significantly more likely than a white person to have a weapon drawn on them in an interaction with law enforcement.⁵¹ That an informational disparity exists at all might be the result of racial animus inherent to the system, or one area simply lagging a few decades behind the other, or something else entirely—but that inquiry cannot

46. *Id.*

47. *Id.* at 15.

48. In an ideal world, Congress could simply pass the Freedom of Police Stop Data Act (though “FPSDA” is not particularly catchy) and establish a federal right to information about undocumented stops by statute, analogous to those created by NEPA and FOIA and FECA. Whether this is a politically viable path forward or not is outside the scope of this Note and beside the point.

49. Jenée Desmond-Harris, *Are black communities overpoliced or underpoliced? Both.*, VOX (Apr. 14, 2015, 1:30PM), <https://www.vox.com/2015/4/14/8411733/black-community-policing-crime>.

50. Frank Edwards et al., *Risk of being killed by police use of force in the United States by age, race-ethnicity, and sex*, 116 PROC. NAT'L ACAD. SCIENCES 16793, 16793 (2019), <https://www.pnas.org/content/pnas/116/34/16793.full.pdf>.

51. Roland G. Fryer, Jr., *An Empirical Analysis of Racial Differences in Police Use of Force*, 127 J. POL. ECON. 1, 4 (2017), https://scholar.harvard.edu/files/fryer/files/empirical_analysis_tables_figures.pdf.

distract from the fact that it results in communities of color being handicapped in their fight to change the status quo of American policing. Unlike some desired reforms, the inherent barrier to change with respect to this aspect of the system is not practicality or workability—it is simply the willingness to use the logic of *Akins* and its progeny in the context of a different problem.

III. THE RECEIPTS

So, what would it look like, to recognize a collective informational injury in all police-civilian encounters? Any system squarely addressing the problem would need to (1) provide an opportunity for data collection with each and every encounter, as opposed to counting only those where there is a formal, obvious injury, and (2) prioritize an individual's access to that data, as opposed to burying it within the bureaucratic control of police departments.

One tool that would seemingly accomplish both of these tasks is the stop receipt—a form or written statement completed by a police officer on the occasion of an encounter with a civilian. Typically, this would include information such as the location of the stop, the reason for the stop, identifiers for the relevant officials (e.g., name and badge number), and a time stamp.

This Part will examine the stop receipt as a means of remedying the cascade of informational injuries that stand in the way of meaningful police reform. After discussing some of the early experiments with stop receipts at the state and local level, it will weigh the pros and cons of their widespread adoption.

A. Test Cases

Twice in the past five years, stop receipts have made their way into reform packages aimed at police accountability. First, they featured in Illinois' S.B. 1304, a 2016 omnibus bill passed in the wake of a troubling report on stop-and-frisk.⁵² Then, they reappeared in a series of reforms shepherded by Buffalo Mayor Byron Brown after the tumultuous summer of 2020.⁵³ Though neither represents the kind of momentous, comprehensive reform that meets the widespread injury discussed in Part II, they are worth noting as test cases for the larger concept.

S.B. 1304 provides that:

Whenever a law enforcement officer subjects a pedestrian to detention in a public place, [they] shall complete a uniform pedestrian stop card. . .⁵⁴

Introduced alongside new rules regarding chokeholds and body cameras, this provision required that, unless impractical or impossible, a citizen would be provided a receipt upon completion of a stop involving a frisk or search. By law, it would include at least the officer's name, agency, badge number, and the reason for the stop.⁵⁵

52. Barash & Everett, LLC, *Legal Ease: New Illinois Law Requires Stop Receipt*, REGISTER-MAIL (Jan. 13, 2016), <https://www.galesburg.com/article/20160113/BLOGS/160119880>.

53. Eileen Buckley, *Phase One of Mayor's police reforms begin today*, WKBW (June 22, 2020, 1:46 PM), <https://www.wkbw.com/news/local-news/mayor-brown-ready-to-implement-phase-one-of-police-reform>.

54. 625 ILL. COMP. STAT. 5/11-212 (b - 5) (2016).

55. See Barash & Everett, LLC *supra* note 52.

This provision is far from perfect. For one thing, its application is limited to stops that include a “frisk, search, summons, or arrest.”⁵⁶ For another, some of the legislators responsible for passing it viewed the law not only as a boon to “a citizen who believes they are being abused by a peace officer,” but also as “protection for wrongfully-accused officers,” muddying the waters as to whom the law was meant to benefit.⁵⁷ Still, of the 161 state representatives and state senators who voted on S.B. 1304, only seven ultimately opposed it⁵⁸—it received support from both Republicans and Democrats, from urban and rural districts, from “law and order,” back-the-blue politicians and those who would eventually be calling for police abolition. Also notable is the fact that it passed in the nation’s sixth-most populous state, which happens to be a statistical microcosm of the other fifty.

In many ways, the jury is still out on stop receipts in Illinois. Four years is hardly enough time to reinvent behavior—on the part of both civilians and police officers—that has been ingrained over the course of decades. A consultant reviewing the Chicago Police Department’s compliance with a variety of stop-and-frisk policies found that at least some residents report that “if they ask police officers for a stop receipt, they are cursed, laughed at, and refused.”⁵⁹ On the other hand, this very failure to comply is the subject of a high-profile federal lawsuit. Jaylan Butler, the only Black member of the Eastern Illinois University swim team, was allegedly made to lie face down in the snow by police officers, while one trained a gun on him and the others shouted profanity, threatening to “blow [his] [expletive] head off.”⁶⁰ Integral to his lawsuit, now pending in the District Court for the Central District of Illinois and supported by the ACLU of Illinois, is the officers’ failure to document the stop or provide him with a receipt.⁶¹

56. 625 ILL. COMP. STAT. 5/11-212 (b-5) (2016).

57. Cory Davenport, *Haine touts ‘stop receipt’ law*, THE TELEGRAPH (Jan. 9, 2016), <https://www.thetelegraph.com/news/article/Haine-touts-top-receipt-law-12602307.php>.

58. *Voting History for S.B. 1304 — 99th General Assembly*, ILL. GENERAL ASSEMBLY (last accessed Nov. 11, 2021), <https://www.ilga.gov/legislation/votehistory.asp?GA=99&DocNum=1304&DocTypeID=SB&GAId=13&LegID=87784&SessionID=88>.

59. ARLANDER KEYS, THE THIRD REPORT ASSESSING THE CHICAGO POLICE DEPARTMENT’S COMPLIANCE WITH THE INVESTIGATORY STOP AND PROTECTIVE PAT DOWN AGREEMENT 10 n. 5 (Oct. 17, 2019), available at https://www.aclu-il.org/sites/default/files/field_documents/consultants_3rd_report_in_aclu_matter_10-17-19.pdf.

60. See e.g., Johnny Diaz, *Officer Pointed Gun at Black College Student’s Head, Lawsuit Says*, N.Y. TIMES (Feb. 16, 2020), <https://www.nytimes.com/2020/02/16/us/jaylan-butler-eastern-illinois-police.html>; Alex Horton, *A black student left his team bus to stretch. Police swarmed and put a gun to his head, lawsuit says*, WASH. POST (Feb. 15, 2020), <https://www.washingtonpost.com/nation/2020/02/15/jaylan-butler-aclu-lawsuit/>; Hollie Silverman, *A black college student was handcuffed facedown in the snow and threatened with a gun to his head by law enforcement who had the wrong guy, lawsuit says*, CNN (Feb. 17, 2020), <https://www.cnn.com/2020/02/17/us/black-swimmer-wrongfully-detained/index.html>.

61. *Id.*

TRAFFIC STOP RECEIPT Buffalo Police Department		
INCIDENT		
Incident #:	Body-cam Enabled:	
Date/Time:		
Location:		
Reason:		
<hr/>		
MOTORIST		
Name:		
DOB:		
Sex:	Race:	
<hr/>		
VEHICLE		
Plate:	Expiry:	
Plate Type:		
Make:	Style:	VIN:
<hr/>		
OFFICER 1		
Name:	DID #	
Rank:		
Assignment:		
	<input type="text"/>	
<hr/>		
OFFICER 2		
Name:	DID #	
Rank:		
Assignment:		
	<input type="text"/>	

Source: Office of Mayor Byron Brown – Initiatives

By contrast, Buffalo's General Order #2020-009 applies to all traffic stops, and requires not only the issuance of a receipt, but that officers "immediately tell [the] resident a reason for the stop."⁶² A blank version of the form that accompanies each stop appears above.

The Order is even more recent than Illinois' S.B. 1304, having gone into effect in June 2020. For that reason, it is far too early to judge its effectiveness. But what is notable is that it has already changed the dialogue around police data, with one local activist group pledging to lobby the Buffalo Police Department to make stop receipt information available to the public via an online database.⁶³

Stop receipts are an admittedly untested, largely theoretical, and probably incomplete fix to a very complex problem. The cases of Illinois and Buffalo simply mark the concept's first real, promising entries into the "laboratories of democracy,"⁶⁴ and demonstrate an openness to a system that might reinvent the way Americans collect and interact with police data.

62. Buckley, *supra* note 53.

63. Deidre Williams, *Advocates press city to make police data on 'stop receipts' public*, BUFFALO NEWS (Aug. 17, 2020), https://buffalonews.com/news/local/crime-and-courts/advocates-press-city-to-make-police-data-on-stop-receipts-public/article_afa43ce0-d71b-11ea-a4fc-ab10ed3708c7.html.

64. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

B. *The Case for Stop Receipts*

Putting the test cases aside for a moment, it is important to articulate the benefits of a system that recognizes the collective, informational injury that results from an undocumented stop, and how stop receipts serve as a remedy.

First and foremost, the widespread issuance of stop receipts would be a monumental step forward in terms of creating and maintaining popular access to police data. In direct contrast to body-worn cameras, there would be no middleman, no process by which a department could evade oversight or bury evidence. Regardless of the content of the encounter, an individual would walk away from it with an abundance of information and absolute autonomy over what to do with it. There would be no need for a FOIA request. They could file away their data individually, share it and cross-reference their experience with others to find patterns, or submit everything to a local civil rights organization for safekeeping. In some cases, civilians might have enough to pursue their own private cause of action by virtue of their receipts. A young Black man testifying that he is consistently being profiled, stopped, and harassed by law enforcement is one thing; that same young Black man being able to enter receipts into evidence showing that Officer Jones pulled him over ten times in a week is another thing entirely.

Policymakers could finally start doing the work of reforming the status quo of racialized policing because they would finally have an accurate picture of how and when and why officers interact with people of color. Rather than simply accepting that “[m]ost [law enforcement] agencies do not collect that data in a systematic way,” and that policing proceeds “in kind of a science-free zone,”⁶⁵ each receipt issued would be a step toward comprehension. Until this comprehension is reached, attempts at reform are little more than educated guesses.

Furthermore, some data indicates that the imposition of a stop receipt system leads to a decrease in the overall number of stops. When courts ordered the police departments of New York City and Milwaukee, Wisconsin to begin issuing receipts, both cities saw a significant decline in the number of documented stops. In New York, this meant a 30% drop from 22,565 stops in 2015 to 13,459 stops in 2019; in Milwaukee, it meant a 20% drop from 34,687 stops in the first half of 2019 to 28,036 stops in the second half of 2019.⁶⁶ Perhaps the prospect of issuing a receipt to someone induces police officers to be more intentional about who they are stopping and when, which would be a very welcome byproduct of the system.

Finally, stop receipts have the potential to empower people of color during their interactions with the police. Having a right to exercise in the moment (beyond just staying silent or asking for a lawyer) might help level the playing field for the millions of Americans who are currently teaching their children all the (rightful) reasons to be fearful and cautious around law enforcement. Not only does the option of a receipt

65. Lynne Peoples, *What the data say about police brutality and racial bias — and which reforms might work*, NATURE (June 19, 2020), <https://www.nature.com/articles/d41586-020-01846-z> (quoting Tracey Meares, founding director of the Justice Collaboratory at Yale Law School).

66. Williams, *supra* note 63.

introduce an element of choice for the individual, which is sorely lacking in the current model, it gives them the tools and agency to actively guard their liberty with a simple “Excuse me, officer, but could I get a receipt? Thanks so much.”

C. *The Case Against Stop Receipts*

Nonetheless, every rose has its thorn. Stop receipts present a unique set of challenges which any jurisdiction hoping to adopt them would have to weigh in turn.

In practice, requiring the issuance of a stop receipt for every encounter could burden police officers in a number of ways. Filling out a receipt would take time, even if it is just a few moments, which might be better allocated elsewhere. Asking for one might be interpreted as confrontational (as is apparently the case with S.B. 1034),⁶⁷ adding even more tension to high stakes encounters and creating yet another obstacle for officers to navigate. Maintaining and organizing millions of receipts may not be feasible depending on the administrative capabilities of the department. In many ways, the introduction of stop receipts fundamentally undermines some of the assumptions and advantages of community policing strategies (e.g., that there is value in undocumented interactions, informality, and partnerships), which might be too much internal tension for departments to bear.

Additionally, civilians might abuse this newfound power. Courts and commissioners could see their offices flooded with frivolous complaints based on shaky legal theories about harassment or unlawful stops, again putting strain on the state’s resources. Just because a police officer is an embodiment of state power does not mean that they should have to take out a pen and paper every time they have a casual, conversational interaction with someone who comes into their orbit—this might even have the undesired effect of widening the gap of understanding between law enforcement and communities of color.

And, of course, no discussion of data in the 21st century is complete without a conversation about the accompanying privacy concerns. Especially in less populous areas, officers may blanch at the idea that so much information would be made so readily accessible. Knowing too many details about which officers work in which neighborhoods or how active and present they are on a Wednesday night as opposed to a Thursday night (using stop receipts as a proxy) might put them individually at risk or even enhance the potential for criminal activity. Officers may be identified, harassed, or even ostracized if the curtain is pulled too far back on American policing.

It is worthwhile to point out, though, that all of these concerns tend to demonstrate how reliant law enforcement is on the status quo—the challenges they currently face, the dynamics they are accustomed to navigating. Just as a politician responds to a business owner who claims a hike to the minimum wage will ruin them, “If you cannot pay your workers a living wage, you probably should not be in business in the first place,” so might the advocate of stop receipts say, “If writing a simple stop receipt is such a nightmare, you probably should not be policing our

67. Keys, *supra* note 59.

community in the first place.” Without more test cases, though, both the pros and cons of stop receipts exist only in the hypothetical; the more jurisdictions choose to experiment, the easier it will be to double down on the positive byproducts and adapt to root out the negative.

IV. CONCLUSION

On a warm Chicago evening in June 2020, a crowd gathered near the mayor’s house, demonstrating against police misconduct and the presence of city law enforcement officers in schools.⁶⁸ When their path was blocked by a wall of uniforms, bullet proof vests, and riot helmets, one of the protestors with a megaphone began searching the names of the officers in front of them in a public database and reading out how many protest-related complaints (e.g., excessive force, verbal abuse, improper searches, denial of counsel) had been lodged against each of them.⁶⁹ “[This is Officer Jones.] He has twelve use of force reports and *forty-six* allegations [of misconduct]” the speaker cries out, as the crowd boos.⁷⁰ The public database had been released a week earlier by the Civilian Office of Police Accountability.⁷¹ Two of the officers who had their indiscretions read out reportedly left the line, and the protest ended peacefully.

This episode shows how everyday people use data when it is at their fingertips—to hold their community’s officials accountable, to persuade, to bring abuses to light, and to protect themselves. For too long, American policing has operated in a sort of black box, with disastrous consequences for communities of color. By design, the public knows very little about the uniformed, omnipresent embodiments of state power that patrol its streets. Introducing the concept of informational injury and experimenting with stop receipts presents an opportunity to set the gears of change in motion and keep these institutions from evading scrutiny. Advocates and reformers will only ever be chipping away at the larger problem until they reckon with the thousands and thousands of police-civilian interactions that go undocumented every day, and the impediment they present to those trying to root out racism in law enforcement.

68. *Chicago Protests: Demonstrators Block Streets, Vote on Officers in CPS Set*, NBC 5 NEWS (June 24, 2020, 4:33 PM), <https://www.nbcchicago.com/news/local/latest-updates-protests-vote-on-officers-in-chicago-public-schools/2294715/>; Tyler LaRiviere (@TylerLaRiviere), TWITTER (June 23, 2020, 10:16 PM), <https://twitter.com/TylerLaRiviere/status/1275613626293014528>.

69. LaRiviere, *supra* note 69.

70. *Id.*

71. Jason Meisner, *New data portal announced for protest-related complaints against Chicago police*, CHICAGO TRIBUNE (June 18, 2020), <https://www.chicagotribune.com/news/criminal-justice/ct-chicago-police-complaints-data-portal-george-floyd-protests-20200618-atzatqkqg5f2foze7jtsfnhn2q-story.html>.