

SCOFFLAW LAW ENFORCEMENT

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I. INTRODUCTION

A scofflaw is a person who “flouts the law,” typically by intentionally violating it out of contempt for that law.² Many law enforcement officers³—despite ostensibly bearing responsibility to enforce the law—

1. @OfficialMaggieL, TWITTER (Aug. 18, 2021, 5:10 PM), <https://twitter.com/OfficialMaggieL/status/1428102108386152449/photo/1> [<https://perma.cc/LX84-VJ3B>].

2. *Scofflaw*, DICTIONARY.COM, <https://www.dictionary.com/browse/scofflaw> [<https://perma.cc/W7Q7-SZRB>]; see also *Scofflaw*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/scofflaw> [<https://perma.cc/2VZ2-5S9A>] (defining scofflaw as “someone who refuses to obey the law”); *Scofflaw*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/scofflaw> [<https://perma.cc/8AB7-8APK>] (last visited June 17, 2023) (defining scofflaw as a “contemptuous” law violator).

3. I use the term “law enforcement officer” in this article to include police officers, sheriffs’ deputies, and other government employees whose responsibilities include enforcing laws. Although prosecutors also frequently identify as law enforcement officials, this article does not focus on their role in law enforcement.

openly flout laws.⁴ They do so both by publicly refusing to enforce laws and by actually breaking the laws themselves.⁵ This article focuses on the latter: the phenomenon of law enforcement officers regularly breaking the law, sometimes the very laws they are tasked with enforcing.⁶ One recent example that drew significant attention during the early stages of the Covid-19 pandemic involved police officers tasked with enforcing Covid-related mask mandates who themselves openly refused to wear masks.⁷ But many more examples exist, ranging from relatively mundane activities like violating traffic laws to far more disturbing behaviors, like obstructing efforts to investigate police misconduct or inflicting illegal force on civilians.⁸ Few, if any, scholars have attempted to comprehensively study the ways and frequency with which police officers break the law, and this article also cannot accomplish that gargantuan task. Instead, this piece achieves two modest but important goals. First, the article creates a taxonomy of motivations behind scofflaw behavior by law enforcement officials, accompanied by examples of behaviors that reflect each motivation.⁹ In so doing, the article begins by answering the question of what incites law enforcement officers to break the law, an important foundational step for those who want to reduce scofflaw behavior among law enforcement. Second, the article studies what systemic factors encourage and empower law enforcement officers to break the law.¹⁰ In other words, the article examines both the why and the how of scofflaw behavior: why do so many law enforcement officers act as scofflaws and how have society and the legal profession enabled this behavior.

The article unfolds in three parts. Part II provides examples of routine ways law enforcement officers violate laws and categorizes those violations by perceived motivation for the behavior. These examples range from law violations motivated by convenience—like an officer who parks illegally in an alley or speeds in his squad car because he wants a shorter walk or quicker drive home—to activities that reflect more complex motives, such as choices to break laws for strategic reasons. They also include law violations motivated by self-protection, like illegally obstructing investigations into police misconduct; those serving as political or social statements, like violating Covid-19 mask mandates or aiding the January 6 insurrectionists; and those motivated by sheer

4. *See infra* Part II.

5. *See id.*

6. In a subsequent article, I plan to discuss the phenomenon of law enforcement administrators making public choices not to enforce certain laws.

7. *See infra* Part II.D.

8. *See infra* Part II.

9. *See infra* Part II.

10. *See infra* Part II.

contempt for life, like gratuitous violence that serves no legitimate law enforcement purpose.

After categorizing the motivations for scofflaw behavior, Part III then turns to analyzing what legal and societal factors embolden and empower this scofflaw behavior. Part III addresses police hiring, training, and culture, as well as the political and legal systems' roles in enabling unaccountable policing. The article concludes in Part IV by discussing the harms of scofflaw law enforcement and arguing that both law enforcement officials and the legal system should invest more effort into understanding and preventing scofflaw law enforcement.

II. MOTIVATIONS FOR SCOFFLAW BEHAVIOR BY LAW ENFORCEMENT

This Part of the article describes some of the many ways law enforcement officers regularly and intentionally break the law, categorizing them by likely motivations for those law violations. The categories are necessarily imperfect because some scofflaw behavior involves overlapping motivations, and different officers may engage in similar behaviors for different reasons.¹¹ Nonetheless, the taxonomy is useful in beginning to answer the question of why law enforcement officers intentionally break the law, as well as providing numerous examples of ways in which they engage in scofflaw behavior. The list intentionally excludes law violations fueled by officers' ignorance of the law. Although that behavior is certainly problematic, it does not fit the definition of "scofflaw" behavior because unwitting law violations are motivationally different than intentional flouting of the law.¹²

A. Law Violations Motivated by Convenience

Some law violations by police officers appear to be a product of convenience: they break the law because they can, and breaking it is easier than following it. The clearest and perhaps most common example of this occurs when law enforcement officers violate traffic laws.¹³ Although

11. See, e.g., *infra* notes 29–30 and accompanying text (discussing officers' various motivations for violating COVID-19 mask mandates) and notes 70–73 (discussing specialized police units that regularly use excessive force in the name of fighting crime, but that appear to be motivated at least in part by lack of respect for life).

12. See DICTIONARY.COM, *supra* note 2.

13. See, e.g., Julianne Cuba, *BAD COP, BAD COP: NYPD Threatens Tipster for Filing 311 Complaints About Illegal Parking*, STREETS BLOG NYC (Oct. 18, 2021), <https://nycstreetsblog.org/2021/10/18/bad-cop-bad-cop-nypd-threatens-tipster-for-filing-311-complaints-about-illegal-parking/> [<https://perma.cc/F2LX-9G66>] (discussing NYPD officers who parked illegally and then harassed tipster who reported their illegal parking);

police officers are frequently tasked with enforcing traffic laws, they regularly break the same laws they enforce against other people.¹⁴ This happens when, for example, officers activate their lights or sirens not because of an actual emergency, but because doing so gives them an excuse to speed more quickly to their next destination without consequence.¹⁵ Police officers also commit other traffic violations, like illegally parking on sidewalks, in bike lanes, or in other outlawed areas, likely because parking in those areas is more convenient than searching for parking on a crowded street.¹⁶

Some law enforcement officers encourage scofflaw behavior in the traffic context by refusing to ticket or cite fellow members of law enforcement.¹⁷ Police unions have even given “get out of jail free” passes to their members, allowing them to present the passes if they are stopped for traffic violations or other minor criminal offenses with the understanding that, once they present these passes, the impending ticket will not be issued.¹⁸

B. Law Violations Motivated by an “End Justifies the Means” Mentality

A second category of routine law violations by law enforcement officers involves what officers may frame as breaking the law for strategic reasons, or what this article labels an “end justifies the means” mentality. The most common example of this is the practice of police officers lying in court, which is so routine that for decades it has had its own moniker:

John Boyle, *Answer Man: Can Cops Park Illegally?*, CITIZEN TIMES (Feb. 9, 2015), <https://www.citizen-times.com/story/news/local/2015/02/09/answer-man-can-cops-park-illegally/23090605/> [<https://perma.cc/A9A2-A9H6>]; WLOS News 13, *Caught on Cam: Cops Parking Illegally*, YOUTUBE (May 22, 2013), <https://www.youtube.com/watch?v=VvyzTRqsbZM> [<https://perma.cc/MM4B-D5U4>].

14. See, e.g., Maggie Sivitt, *Rules of the Road: Do They Apply to Chicago Cops*, WBEZ CHICAGO (July 9, 2017, 9:00 AM), <https://www.wbez.org/stories/rules-of-the-road-do-they-apply-to-chicago-cops/38133316-9365-486d-b24a-bdcf549b26c9> [<https://perma.cc/3F3M-44JU>].

15. This specific example comes from a conversation I had with a police sergeant who described this as regular practice for officers in his agency.

16. See Cuba, *supra* note 13; Boyle, *supra* note 13; WLOS News 13, *supra* note 13.

17. See Max Matza, ‘Get Out of Jail Free’: Will This Card Get You Off a Speeding Ticket?, BBC NEWS (Jan. 23, 2018), <https://www.bbc.com/news/world-us-canada-42780382> [<https://perma.cc/D464-9P5E>]; Alex Lockie, *NYPD Cops Reportedly Furious Over Being Given Fewer ‘Get Out of Jail Free’ Cards to Hand Out to Friends*, BUS. INSIDER (Jan. 22, 2018), <https://www.businessinsider.com/nypd-cops-reportedly-furious-over-cut-in-get-out-of-jail-free-cards-2018-1> [<https://perma.cc/WYL8-SK8J>].

18. Matza, *supra* note 17; Lockie, *supra* note 17.

“testilying.”¹⁹ Jerome Skolnick, one of the first scholars to write about testilying, described it in 1982 as a pervasive cultural norm where officers regularly lie under oath about ways they gathered evidence, with the goal of preventing judges from excluding evidence obtained by unconstitutional means.²⁰ Perjury, according to Skolnick, is “a routine way . . . to compensate for what [officers view] as limitations the courts have placed on [their] capacity to deal with criminals.”²¹

Many other authors, including me, have studied and written about testilying in the years since Skolnick’s article.²² Testilying continues to flourish in part because many police departments still ignore or minimize the Constitution when crafting policing strategies.²³ Perhaps the most prominent recent example of this was the New York Police Department’s stop and frisk policy, where police officers routinely stopped and frisked people of color in search of weapons or other evidence of crime, without reasonable suspicion that those people had committed crimes.²⁴ Although the New York Police Department received particular attention because of the scale of its constitutional violations,²⁵ it was far from alone in this strategy. Many other police departments have been exposed in recent years as committing widespread constitutional violations, often against people of color.²⁶

19. See I. Bennett Capers, *Crime, Legitimacy, and Testilying*, 83 IND. L. J. 835, 870 (2008); Christopher Slobogin, *Testilying: Police Perjury and What to Do About It*, 67 U. COLO. L. REV. 1037, 1040 (1996) (“[L]ying intended to convict the guilty . . . is so common and so accepted in some jurisdictions that the police themselves have come up with a name for it: ‘testilying.’”); Rachel Moran, *Contesting Police Credibility*, 93 WASH. L. REV. 1339, 1342 (2018).

20. Jerome Skolnick, *Deception by Police*, 1 CRIM. JUST. ETHICS 40, 42–43 (1982).

21. *Id.* at 43.

22. See Bennett Capers, *supra* note 19; Slobogin, *supra* note 19; Moran, *supra* note 19.

23. See Bennett Capers, *supra* note 19, at 871–72.

24. See *Floyd v. City of New York*, 959 F. Supp. 2d 540, 602, 627–62 (S.D.N.Y. 2013); see also Eric T. Schneiderman, N.Y. STATE OFF. OF THE ATT’Y GEN., A REPORT ON ARRESTS ARISING FROM THE NEW YORK CITY POLICE DEPARTMENT’S STOP-AND-FRISK PRACTICES 5, 23 (2013).

25. See, e.g., Taahira Thompson, *NYPD’s Infamous Stop-and-Frisk Policy Found Unconstitutional*, LEADERSHIP CONF. EDUC. FUND (Aug. 21, 2013), <https://civilrights.org/edfund/resource/nypds-infamous-stop-and-frisk-policy-found-unconstitutional/> [https://perma.cc/U9QX-WPUB]; Dorothee Benz, *Landmark Decision: Judge Rules NYPD Stop and Frisk Practices Unconstitutional, Racially Discriminatory*, CTR. FOR CONST. RIGHTS (Aug. 21, 2014), <https://ccrjustice.org/home/press-center/press-releases/landmark-decision-judge-rules-nypd-stop-and-frisk-practices> [https://perma.cc/X9AW-X34K].

26. See, e.g., MINN. DEPT. OF HUMAN RTS., INVESTIGATION INTO THE CITY OF MINNEAPOLIS AND THE MINNEAPOLIS POLICE DEPARTMENT (2022), https://mn.gov/mdhr/assets/Investigation%20into%20the%20City%20of%20Minneapolis%20and%20the%20Minneapolis%20Police%20Department_tcm1061-526417.pdf [https://perma.cc/Z7Y2-S

The incentive for these policies is typically framed as fighting crime; police officers sometimes view the law as hampering their crime-fighting efforts and may violate the law if they believe it will help them prevent crime or gather evidence.²⁷ For example, in early 2023, the interim chief of the Pittsburgh Police Department announced that he was authorizing his patrol officers to stop drivers for minor traffic violations like expired registration stickers, despite a recent city ordinance banning traffic stops for minor violations that were not safety related.²⁸ The chief stated that he was authorizing the stops in part to “boost morale” among his officers because officers believed the ban on traffic stops for minor violations “prevent[ed] them from doing their jobs.”²⁹ Although a spokesperson for the police department claimed that the stops did not violate the city ordinance, several legal experts found no justification for the department’s position.³⁰

C. Law Violations Motivated by Self-Protection

Law enforcement officers also break the law to protect themselves, *e.g.*, when they falsify police reports or fail to report uses of force to cover up for their own or their fellow officers’ misconduct.³¹ Examples of this behavior unfortunately abound. The Oakland, California police department was under court monitoring for decades after a scandal broke in the 1990s involving a large group of officers who planted drugs on or physically beat Black civilians and then falsified reports to hide their

KMV] (finding pattern and practice of unconstitutional stops and uses of force against Black people); Plaintiffs’ Seventh Report to Court and Monitor on Stop and Frisk Practices: Fourth Amendment Issues at 5–17, *Bailey v. City of Philadelphia*, C.A. No. 10-5952, (E.D. Pa. May 2, 2017) (providing data showing high rates of illegal stops by Philadelphia police officers, and disparate racial impact of those illegal stops on people of color).

27. *See, e.g.*, *Johnson v. United States*, 333 U.S. 10, 13–14 (1948); *Illinois v. Gates*, 462 U.S. 213, 240 (1983); *Mincey v. Arizona*, 437 U.S. 385, 395 (1978) (all noting that zealous officers attempting to fight crime do not always adhere to the Constitution’s role in restraining officer behavior). *But see* Nirej Sekhon, *Police and the Limit of Law*, 119 COLUM. L. REV. 1711 (2019) (critiquing the notion that police predominately serve a crime-control function).

28. Kiley Koscinski, *Pittsburgh Police Resume Secondary Traffic Stops Despite City Ordinance Against Them*, WESA (Jan. 12, 2023), <https://www.wesa.fm/politics-government/2023-01-12/pittsburgh-police-resume-secondary-traffic-stops-despite-city-ordinance-against-them> [<https://perma.cc/UP7B-87E6>]; *see also* PITTSBURGH, PA., CODE OF ORDINANCES tit. 5, art. 1, § 503.17 (2021).

29. Koscinski, *supra* note 26.

30. *Id.*

31. *See, e.g., infra* notes 20–25 and accompanying text.

misconduct.³² When former Chicago police officer Jason Van Dyke murdered 17-year-old Laquan McDonald in 2014, multiple officers witnessed the shooting and filed false reports claiming that Mr. McDonald was threatening the officers at the time of the shooting.³³ After Minneapolis police officers murdered George Floyd in 2020, the police department released a report stating that Mr. Floyd had died in a medical incident and omitted any information regarding the officers' use of force that caused his death.³⁴ Most recently, in early 2023, Memphis police officers assaulted and killed Tyre Nichols, and then provided an initial report claiming that Mr. Nichols had "started to fight" with them and attempted to grab one of their guns, though video of the incident contradicts this claim.³⁵

Law enforcement officers also act as scofflaws when they protect their own by refusing to investigate reports of police misconduct.³⁶ Internal affairs investigations—in which officers within police departments are tasked with investigating allegations of misconduct by other officers in their department—have been plagued by bias for years.³⁷ The problem is so widespread that many internal affairs departments sustain only a tiny

32. See ALI WINSTON & DARWIN BONDGRAHAM, *THE RIDERS COME OUT AT NIGHT: BRUTALITY, CORRUPTION, AND COVER-UP IN OAKLAND* (2023); see also *Allen v. City of Oakland*, Case No. C00-4599 WHO, U.S. DIST. CT. N.D. CAL. <https://www.cand.uscourts.gov/judges/orrick-william-h-who/allen-v-city-of-oakland-case-no-c00-4599/> [<https://perma.cc/QF3K-NMCS>] (collecting reports by the independent monitor on the Oakland police department).

33. See Safia Samee Ali, *Inspector General Report Shows at Least 16 Officers Involved in Cover-Up of Laquan McDonald Shooting*, NBC NEWS (Oct. 9, 2019), <https://www.nbcnews.com/news/us-news/inspector-general-report-shows-least-16-officers-involved-cover-laquan-n1064401> [<https://perma.cc/R788-J6WF>]; OFF. OF INSPECTOR GEN., SUMMARY REPORT OF INVESTIGATION, CASE # 15-0564 (OFFICER JASON VAN DYKE) (2016), <https://news.wttw.com/sites/default/files/article/file-attachments/15-0564%20-%20Van%20Dyke%20Summary%20Report%20FINAL.pdf> [<https://perma.cc/27F9-4RPU>] (describing the Inspector General's findings of Officer Van Dyke's wrongdoing in Laquan McDonald's death); OFF. OF INSPECTOR GEN., SUMMARY REPORT OF INVESTIGATION, OFFICE OF INSPECTOR GENERAL CASE # 15-0564 (OFFICER DORA FONTAINE) (2016), <https://news.wttw.com/sites/default/files/article/file-attachments/15-0564%20-%20Fontaine%20Summary%20Report%20FINAL.pdf> [<https://perma.cc/7TYZ-SCZS>] (describing the Inspector General's findings of Officer Fontaine's wrongdoing in Laquan McDonald's death).

34. John Elder, *Investigative Update on Critical Incident*, MINNEAPOLIS POLICE DEP'T (May 26, 2020), <https://web.archive.org/web/20210331182901/https://www.insidempd.com/2020/05/26/man-dies-after-medical-incident-during-police-interaction/>.

35. See Jessica Jaglois et al., *Initial Police Report on Tyre Nichols Arrest Is Contradicted by Videos*, N.Y. TIMES (Feb. 1, 2023), <https://www.nytimes.com/2023/01/30/us/tyre-nichols-arrest-videos.html> [<https://perma.cc/DCZ4-LZXXK>].

36. See generally Rachel Moran, *Ending the Internal Affairs Farce*, 64 BUFF. L. REV. 837 (2016).

37. See *id.* at 859–61.

percentage of complaints against their officers, or even openly admit that their investigations are designed to exonerate their officers.³⁸ One law enforcement agency in Louisiana has even gone so far as to engage in obstructionist conduct by illegally destroying misconduct records, preventing outsiders from assessing how the department has addressed misconduct claims and whether officers have histories of misconduct.³⁹

D. Law Violations as Expressions of Political Values

A fourth category of law violations involves law enforcement officers who intentionally, and sometimes publicly, violate laws to make political statements about their disregard for such laws.⁴⁰ This is distinct from law enforcement administrators who choose not to enforce laws, such as the self-described “constitutional sheriffs” who have announced their unwillingness to enforce laws they believe, for example, unconstitutionally restrict possession of firearms.⁴¹ While the issue of law enforcement administrators publicly refusing to enforce laws is a worthy topic of its own, this section focuses on the understudied issue of law enforcement officers actually breaking laws as political statements.

One recent example is the phenomenon of law enforcement officers violating Covid-related mask mandates.⁴² In New York City, the problem

38. See *id.* at 853–65; see also U.S. DEP’T OF JUST., INVESTIGATION OF THE CLEVELAND DIVISION OF POLICE 31 (2014), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/04/cleveland_division_of_police_findings_letter.pdf [<https://perma.cc/85XT-AAFS>] (describing how the Cleveland police department’s supervisory investigations “appear to be designed from the outset to justify officers’ actions”).

39. See Richard A. Webster, *A Sheriff in Louisiana Has Been Destroying Records of Deputies’ Alleged Misconduct for Years*, PROPUBLICA (Jan. 12, 2023), <https://www.propublica.org/article/jefferson-parish-sheriff-misconduct-records-allegations-jpso> [<https://perma.cc/K49N-34GL>]; Laurence Du Sault & Geoffrey King, *Senior Officials Ordered Destruction of Vallejo Police Shooting Evidence*, OPEN VALLEJO (Feb. 5, 2023), <https://openvallejo.org/2023/02/05/vallejo-destroyed-evidence-of-police-killings/> [<https://perma.cc/7HNX-9JJK>].

40. See, e.g., *infra* notes 27–43 and accompanying text (describing instances of officers violating laws based on their political values or motivations).

41. See Josh Marcus, *The Shadow Movement of Right-Wing Sheriffs Using Their Powers to Resist Gun Control and Investigate 2020 Election*, INDEPENDENT (Oct. 20, 2022), <https://www.independent.co.uk/news/world/americas/us-politics/constitutional-sheriff-gretchen-whitmer-trump-b2207081.html> [<https://perma.cc/N6M3-LY3E>]; Shawn Fields, *Second Amendment Sanctuaries*, 115 NW. U. L. REV. 437, 453–60 (2020).

42. See India Thusi, *The Biopolitics of Maskless Police*, 18 OHIO ST. J. CRIM. L. 555, 556 (2021); Michael Wilson, *Why Are So Many N.Y.P.D. Officers Refusing to Wear Masks at Protests?*, N.Y. TIMES (June 11, 2020), <https://www.nytimes.com/2020/06/11/nyregion/nypd-face-masks-nyc-protests.html> [<https://perma.cc/VT67-93RA>]; see also Dean Meminger, *Despite Warnings of Disciplinary Action, Some Officers Still Not Wearing Face*

of unmasked officers was so widespread that the city's Public Safety Committee chairman addressed it publicly, imploring officers to set an example about the laws they were responsible for enforcing.⁴³ Some officers even harassed civilians who asked them to put on masks; in one incident, after a subway rider confronted two maskless NYPD officers about why they were not wearing masks, the officers grabbed him and forcibly removed him from the subway.⁴⁴

Failure to wear masks can have many motivations, including simply discomfort or disbelief about the health value of wearing masks.⁴⁵ So some officers' decisions to violate mask laws were presumably motivated by reasons other than political expression.⁴⁶ But mask-wearing was also a prominent political controversy during the pandemic, so for some officers, the decision not to wear masks was likely politically motivated.⁴⁷ India Thusi argues that policing without a mask during the summer of 2020 was itself a political act when many police departments were responding to protests involving condemnations of police brutality or otherwise agitating for racial justice.⁴⁸

Coverings, SPECTRUM NEWS NY1 (Oct. 6, 2020), <https://www.ny1.com/nyc/all-boroughs/news/2020/10/06/despite-warnings-of-disciplinary-action-many-officers-still-not-wearing-face-coverings> [<https://perma.cc/NLZ9-RB2Y>]; see also Jake Offenhartz, *Called Out for Not Wearing Mask, NYPD Officer Dismisses Teen as "Male Version Of Karen,"* GOTHAMIST (Sept. 16, 2020), <https://gothamist.com/news/called-out-not-wearing-mask-nypd-officer-calls-teen-male-version-karen> [<https://perma.cc/67RY-D4AE>]; Christopher Robbins, *Photos & Video Show NYPD Officers, Including Top Brass, Openly Flouting Mask Mandate,* GOTHAMIST (Sept. 9, 2020), <https://gothamist.com/news/photos-video-show-nypd-officers-including-top-brass-openly-flouting-mask-mandate> [<https://perma.cc/8RCK-CAU6>].

43. Meminger, *supra* note 42.

44. Stephen Nessen, *Unmasked Cops, Who Shoved Customer Out of Subway for Asking Why They Were Unmasked, Face Discipline,* GOTHAMIST (Oct. 20, 2021), <https://gothamist.com/news/unmasked-cops-who-shoved-customer-out-subway-asking-why-they-were-unmasked-face-discipline> [<https://perma.cc/9NS2-2XU8>].

45. See Edward D. Vargas & Gabriel R. Sanchez, *American Individualism Is an Obstacle to Wider Mask Wearing in the US,* BROOKINGS (Aug. 31, 2020), <https://www.brookings.edu/blog/up-front/2020/08/31/american-individualism-is-an-obstacle-to-wider-mask-wearing-in-the-us/> [<https://perma.cc/T8Y6-U9JY>] (providing results of survey assessing Americans' motivations for declining to wear masks).

46. *See id.*

47. See Dannagal G. Young et al., *The Politics of Mask-Wearing: Political Preferences, Reactance, and Conflict Aversion During COVID*, 298 SOC. SCI. & MED. 114836 (2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8866197/> [<https://perma.cc/U9CJ-VC6L>].

48. Thusi, *supra* note 42, at 571–72 (“Flouting mask mandates while responding to calls for police accountability and defunding the police sends a message about police masculinity and ambivalence toward the law and the health of the protestors.”).

While refusal to wear masks was typically the result of individual officer decisions rather than office policy, other law enforcement administrators have encouraged or even ordered their agencies to violate federal or local orders with which they disagreed.⁴⁹ A federal court held former Maricopa County, Arizona sheriff Joe Arpaio in contempt for violating a preliminary injunction requiring the sheriff's office to stop arresting and detaining people the office suspected were illegal immigrants, even when those people were not suspected of violating any state laws.⁵⁰ The court found that Arpaio and his underlings were aware of and intentionally disregarded the injunction prohibiting these arrests and then deliberately lied to investigators about their violation of the court's order.⁵¹ The court also found that these law violations were politically motivated, as Arpaio publicly stated that he believed violating the court's orders would help his campaign for reelection.⁵²

Several sheriffs in the mountain west region have also openly violated federal laws regulating usage of federal land.⁵³ During the early 2000s in Utah, multiple sheriffs revolted against federal Bureau of Land Management orders to close certain roads in order to protect cultural resources.⁵⁴ One sheriff forcibly reopened a closed road, and another removed multiple signs ordering closure of certain federal lands.⁵⁵ These acts also appear to have been politically motivated, in that the sheriffs claimed they had the right to decide how lands in their jurisdictions are used and believed that the federal government had no right to interfere in those decisions.⁵⁶

Another possible example of politically motivated law violations involves officers who participated in or aided the January 6, 2021, invasion of the U.S. Capitol. Dozens of police officers illegally entered the Capitol building, and several have been convicted for their role in the riots that followed these illegal entries.⁵⁷ While most of these officers were off-duty,

49. *See infra* notes 33–43 and accompanying text.

50. *Melendres v. Arpaio*, No. CV-07-2513-PHX-GMS, 2016 WL 3996453 *1–2 (D. Ariz. July 26, 2016), *aff'd sub nom. Melendres v. Maricopa Cnty.*, 897 F.3d 1217 (9th Cir. 2018).

51. *Id.* at *1–2, 3–19, 35–42.

52. *Id.* at *9–10.

53. Jonathon Thompson, *The Rise of the Sagebrush Sheriffs*, HIGH COUNTRY NEWS, Feb. 2, 2016, <http://www.hcn.org/issues/48.2/the-rise-of-the-sagebrush-sheriffs> [<https://perma.cc/BUZ5-7ZT8>].

54. *Id.*

55. *Id.*

56. *Id.*

57. *See* Alan Rozenstein, *The Lawfare Podcast: How the Police Contributed to the January 6th Insurrection*, LAWFARE BLOG (July 5, 2022, 12:00 PM), <https://www.lawfareblog.com/lawfare-podcast-how-police-contributed-january-6th-insurrection> [<https://perma.cc/BUZ5-7ZT8>].

several on-duty Capitol police were suspended shortly after the attacks and placed under investigation for allegedly allowing protesters into the Capitol.⁵⁸ Only one Capitol police officer has been convicted of a crime associated with the January 6 riots. In late 2022, former Capitol police officer Michael Riley was convicted of one count of obstruction for advising a Facebook friend to sanitize a social media post in which the person admitted to participating in the riot.⁵⁹ Riley sent the participant a private Facebook message saying that he was a Capitol police officer who “agrees with your political stance,” and instructed the person to remove portions of his Facebook post.⁶⁰

E. Law Violations Motivated by Contempt for Life

Law enforcement agencies in this country have a long history of showing disrespect for life, particularly the lives of Black residents. After the Civil War, when groups like the Ku Klux Klan terrorized Black residents of the United States South with lynchings, police officers not only allowed but participated in many of those lynchings.⁶¹ One study of 100 lynchings concluded that police officers condoned more than ninety percent of them and directly participated in more than fifty percent.⁶²

Police officers also regularly violated protesters’ rights during the Civil Rights era of the 1950s and 1960s, including making wrongful arrests and brutalizing people who were peacefully protesting segregationist laws.⁶³ That behavior cannot be relegated to “history”;

.cc/RD6D-V5SD]; Meryl Kornfield, *Husband-Wife Seattle Police Officers Fired for Being at Capitol Riot*, WASH. POST (Aug. 6, 2021, 10:17 PM), <https://www.washingtonpost.com/nation/2021/08/06/seattle-police-fired-capitol-riot/> [<https://perma.cc/L7H4-UXLH>]; H.J. Mai, *Capitol Police Suspends 6 Officers, Investigates Dozens More After Capitol Riots*, NPR (Feb. 19, 2021, 2:03 PM), <https://www.npr.org/sections/insurrection-at-the-capitol/2021/02/19/969441904/capitol-police-suspends-6-officers-investigates-dozens-more-after-capitol-riots> [<https://perma.cc/ZJG8-EE9M>].

58. Rozenshtein, *supra* note 57, at 32:00.

59. *Former U.S. Capitol Police Officer Found Guilty of Obstruction Charge Involving Investigation of Jan. 6 Capitol Breach*, U.S. DEP’T OF JUST. (Oct. 28, 2022), <https://www.justice.gov/usao-dc/pr/former-us-capitol-police-officer-found-guilty-obstruction-charge-involving-investigation> [<https://perma.cc/WE52-7HLR>]; Vimal Patel, *Ex-Capitol Police Officer Found Guilty of Obstruction in Jan. 6 Case*, N.Y. TIMES (Oct. 28, 2022), <https://www.nytimes.com/2022/10/28/us/jan-6-capital-officer-convicted.html> [<https://perma.cc/NJ2D-DUC2>].

60. *Former U.S. Capitol Police Officer Found Guilty*, *supra* note 59.

61. See Ashraf H.A. Rushdy, *AMERICAN LYNCHING* 86–87 (Yale Univ. Press ed. 2012).

62. *Id.* at 86 (citing Arthur F. Raper, *THE TRAGEDY OF LYNCHING*, Patterson Smith, 1969) (1933)).

63. See EQUAL JUST. INITIATIVE, *LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR* 58 (3d ed. 2017).

during the nationwide protests that erupted after the murder of George Floyd in 2020, many police departments illegally and routinely violated protesters' rights by using illegal force, making illegal arrests, and otherwise threatening people engaged in constitutionally protected behavior.⁶⁴

Police officers who use threats, coercion, and torture also exhibit contempt for life. Between the 1970s and 1990s, Chicago police officers physically tortured at least 100 Black men, many of whom spent significant time in prison after police coerced them into confessing to crimes they did not commit.⁶⁵ More than two hundred additional wrongful convictions in Chicago have been vacated as the product of officers illegally planting drugs on people who refused officers' extortion attempts.⁶⁶ While these officers may have attempted to justify some of their behaviors by the notion that they were closing cases, torturing or falsely accusing innocent people of crimes has no legitimate law enforcement justification. Law enforcement officers have also been convicted or removed from duty for activities like sexually assaulting crime victims or suspects.⁶⁷ There is little way to explain this behavior other than a complete disrespect for the lives of the people impacted.

Although most law enforcement agencies do not have formal written policies endorsing illegal behavior, many departments intentionally turn a

64. See, e.g., 2020 NYC PROTESTS, NYC CIVILIAN COMPLAINT REVIEW BOARD, https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/issue_based/2020NYCProtestReport.pdf [<https://perma.cc/HTZ6-2Y78>] (describing NYPD officers' law violations during 2020 protests, mostly involving illegal force); see also, Aaron Katersky, *Nearly 150 New York City Police Officers Violated Department Rules During 2020 George Floyd Protests: Report*, ABC NEWS (Feb. 6, 2023), <https://abcnews.go.com/US/150-new-york-city-police-officers-violated-department/story?id=96928974> [<https://perma.cc/W7DZ-H6HX>]; see also, Tobi Thomas et. al, *Nearly 1,000 Instances of Police Brutality Recorded in US Anti-Racism Protests*, GUARDIAN (Oct. 29, 2020), <https://www.theguardian.com/us-news/2020/oct/29/us-police-brutality-protest> [<https://perma.cc/2768-8BJ2>].

65. See *Chicago Police Torture Archive*, CHICAGO POLICE TORTURE ARCHIVE, <https://chicagopolicetorturearchive.com/> [<https://perma.cc/2EXX-8HAS>]; see also Heather Cherone, *Cost of Burge-Era Torture Grows as Chicago City Council Agrees to Pay 2 Wrongfully Convicted Men \$14M*, WTTW (Jan. 26, 2022), <https://news.wttw.com/2022/01/26/cost-burge-era-torture-grows-chicago-city-council-agrees-pay-2-wrongfully-convicted-men> [<https://perma.cc/2768-8BJ2>].

66. See NATIONAL REGISTRY OF EXONERATIONS, 2021 ANNUAL REPORT 5, 9 (Apr. 12, 2022), <https://www.law.umich.edu/special/exoneration/Documents/NRE%20Annual%20Report%202021.pdf> [<https://perma.cc/PJB5-Y48X>]; see also Matt Masterson, *Illinois Once Again Leads Nation in Criminal Exonerations, Largely Due to Cases Tied to Ex-Chicago Sergeant*, WTTW (Apr. 12, 2022), <https://news.wttw.com/2022/04/12/illinois-once-again-leads-nation-criminal-exonerations-largely-due-cases-tied-ex-chicago> [<https://perma.cc/X2K3-28PF>].

67. See Dara E. Purvis & Melissa Blanco, *Police Sexual Violence: Police Brutality, #MeToo, and Masculinities*, 108 CAL. L. REV. 1487 (2020).

blind eye to illegal behavior—sometimes with tragic consequences.⁶⁸ An investigation into the Newark Police Department revealed that, between 2010–2012, the department received multiple credible reports that officers were stealing from people getting booked into jail and did not investigate any allegations or discipline any officers for these thefts.⁶⁹ When Chicago police tortured more than 100 Black men, they did so with the participation and blessing of senior management, up to at least the commander level.⁷⁰

Some of the most prevalent uses of illegal force occur in specialized units that police departments have created for the ostensible purpose of cracking down on crime in particular neighborhoods.⁷¹ The early 2023 killing of Tyre Nichols after a brutal beating by at least five Memphis police officers within the department’s “Scorpion Unit”—a special unit formed in 2022 purportedly to crack down on street crime—is a particularly horrific example of what can go wrong when police officers operate with almost complete impunity.⁷² Within weeks of the officers killing Mr. Nichols, multiple Black men came forward with stories of previous unjustified and often violent encounters with the same officers.⁷³ Memphis is by no means alone in authorizing street units with patterns of violence: Baltimore, Oakland, Washington, DC, and Los Angeles police departments, among many others, have operated specialized units that were later exposed for routinely and illegally terrorizing Black neighborhoods.⁷⁴

68. See Moran, *supra* note 36, at 855–68.

69. U.S. DEP’T OF JUST., CIV. RTS. DIV., INVESTIGATION OF THE NEWARK POLICE DEPARTMENT 31, 35 (July 22, 2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark_findings_7-22-14.pdf [<https://perma.cc/PE2D-2LBG?type=pdf>].

70. See Jon Burge: A Curated Collection of Links, MARSHALL PROJECT (Nov. 8, 2022), <https://www.themarshallproject.org/records/551-jon-burge> [<https://perma.cc/FEP2-HT6F>].

71. For thorough historical descriptions of some of these units, see, for example, JUSTIN FENTON, WE OWN THIS CITY: A TRUE STORY OF COPS, CRIME, AND CORRUPTION (Faber & Faber eds., 2021) (describing violence by officers in Baltimore’s Gun Trace Task Force); WINSTON & BONDGRAHAM, *supra* note 32 (describing violence by officers in Oakland’s “Riders” unit).

72. Adrian Sainz, *Memphis Police Disband Unit that Fatally Beat Tyre Nichols*, AP NEWS (Jan. 29, 2023), <https://apnews.com/article/politics-memphis-crime-law-enforcement-1b7e8fa4ed7120a897086250d5d6da35> [<https://perma.cc/RBD3-XFPN>].

73. See Kayla Solomon, *Memphis Man, Attorney Discuss Encounter with SCORPION Unit*, FOX 13 (Jan. 30, 2023), https://www.fox13memphis.com/news/memphis-man-attorney-discuss-encounter-with-scorpion-unit/article_34091101-ab31-5729-84b5-71c67624187a.html [<https://perma.cc/D6FL-9XHT>]; Jessica Gertler, *What We Know About the Memphis Police SCORPION Unit in Tyre Nichols Case*, WREG (Feb. 7, 2023), <https://wreg.com/news/local/tyre-nichols/what-we-know-about-mpd-unit-involved-in-tyre-nichols-case/> [<https://perma.cc/2PLA-EWB7>].

74. See Fenton, *supra* note 71 (describing violence by officers in Baltimore’s Gun Trace Task Force); WINSTON & BONDGRAHAM, *supra* note 32; Keith L. Alexander &

As Part II reveals, law enforcement officers intentionally break the law in many ways and for many reasons. But how does this illegal behavior continue to permeate law enforcement, and what role has the legal system played in allowing this to continue? Part III engages with these questions.

III. EXPLANATIONS FOR SCOFFLAW BEHAVIOR BY LAW ENFORCEMENT OFFICERS

While Part II focused on officers' motivations for scofflaw behavior, Part III delves into the practicalities of scofflaw behavior: specifically, how society systemically empowers and enables this behavior to continue. This Part is divided into two sections. Section A. explores systemic factors internal to policing, such as police hiring, training, and culture. Section B. discusses systems external to policing: namely, how our political and legal systems have consistently enabled scofflaw behavior and largely declined to hold officers accountable for such behavior.

A. Systems Internal to Policing: Officer Hiring, Training, and Culture

Although law enforcement agencies have made some efforts to diversify their forces in the past few decades, policing remains a profession dominated by men. In 2001, women comprised only 12.7 percent of sworn officers in law enforcement agencies with 100 or more officers and an even smaller 8.1 percent in agencies with fewer than 100 sworn officers.⁷⁵ That number has barely budged in the past twenty years. As of 2019, 87.2 percent of sworn law enforcement officers were male, and only 12.8 percent were female.⁷⁶ Policing has also long been

David Hermann, *7 D.C. Officers Removed From Violent-Crime Squad Amid Internal Probe*, WASH. POST (Sept. 30, 2022), <https://www.washingtonpost.com/dc-md-va/2022/09/30/dc-police-internal-investigation-guns/> [<https://perma.cc/LF8X-ZSFX>]; REPORT OF THE RAMPART INDEPENDENT REVIEW PANEL (Nov. 16, 2000), <https://law.stanford.edu/wp-content/uploads/sites/default/files/publication/665057/doc/slspublic/2000%20Report%20of%20Rampart%20Independent%20review%20panel.pdf> [<https://perma.cc/JRU8-77Q6>] (reporting on investigation into abuses committed by Los Angeles Police Department's anti-gang unit).

75. See NATIONAL CENTER FOR WOMEN & POLICING, EQUALITY DENIED: THE STATUS OF WOMEN IN POLICING: 2001 (2002), available at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/equality-denied-status-women-policing-2001> [<https://perma.cc/5JC7-8A89>].

76. See *2019 Crime in the United States: Table 74: Full-Time Law Enforcement Employees by Population Group Percent Male and Female*, FBI CRIM. JUST. INFO. SERVS. DIV. (2019), <https://ucr.fbi.gov/crime-in-the-u.s/2019/crimein-the-u.s.-2019/tables/table-74> [<https://perma.cc/ZL9V-33D4>].

characterized as a masculine job.⁷⁷ Traditional American conceptions of masculinity often emphasize power and control, which may manifest itself in a desire to subordinate rather than submit to the authority of others.⁷⁸ Frank Rudy Cooper has examined how masculinity affects policing, and theorized that masculinity norms influence officers' desire to appear masculine by, for example, employing aggression against others.⁷⁹ Many law enforcement agencies in the United States prize aggression and physical strength over cooperation and an ability to deescalate conflicts.⁸⁰ Masculinity theorists have also reasoned that gender impacts who has power in the workplace, and that men enjoy numerous forms of privilege and power at work including the ability to define how they work.⁸¹ All of these norms could result in a predominantly male workforce more prone to violating certain rules or laws they believe are not worth following, particularly if those laws conflict with their values of power and aggression.

Most law enforcement officers are also white.⁸² No comprehensive data addresses whether white police officers break the law more regularly than non-white officers. However, white men have traditionally controlled the legal system in the United States, including police, courts, and prisons.⁸³ And white people in the United States are historically both more

77. Frank Rudy Cooper, "Who's the Man?": *Masculinities Studies, Terry Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671, 694 (2009) ("An overarching characteristic of policing . . . is its definition as a masculine job").

78. See Ann C. McGinley, *Masculinities at Work*, 83 OR. L. REV. 359, 380 (2004); see also David Collinson & Jeff Hearn, *Naming Men as Men: Implications for Work, Organization and Management*, 1 GENDER, WORK & ORG. 11, 13 (1994); see also R.W. CONNELL, *MASCULINITIES* 74 (1995) (explaining that, among European and American cultures, masculinity is typically associated with power and dominance).

79. Cooper, *supra* note 77, at 674–76, 692 (positing a "close association" between masculinity and police work); Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 793 (2000) ("Police work has traditionally been coded hypermasculine.").

80. See Harris, *supra* note 79, at 793 (2000); see also Robert W. Benson, *Changing Police Culture: The Sine Qua Non of Reform*, 34 LOY. L.A. L. REV. 681, 682 (2001).

81. See McGinley, *supra* note 76, at 370–71, 375.

82. See CONNOR BROOKS, BUREAU OF JUST. STATISTICS, FEDERAL LAW ENFORCEMENT OFFICERS, 2020 STATISTICAL TABLES, (Sept. 2022), <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/fleo20st.pdf> [<https://perma.cc/3B95-KT6R>]; see also Lauren Leatherby & Richard Oppel Jr., *Which Police Departments Are as Diverse as Their Communities?*, N.Y. TIMES (Sept. 23, 2020), <https://www.nytimes.com/interactive/2020/09/23/us/bureau-justice-statistics-race.html> [<https://perma.cc/7EK3-PERH>]; David Graham, *America Is Losing Its Black Police Officers*, ATLANTIC (Oct. 4, 2021), <https://www.theatlantic.com/ideas/archive/2021/10/america-is-losing-its-black-police-officers/620291/> [<https://perma.cc/AT9L-799C>].

83. See Connell, *supra* note 78, at 75; see also Harris, *supra* note 79, at 784 (positing that white men have a "tighter grip" on political and social dominance).

likely to escape punishment when they commit certain crimes that other racial groups are punished for⁸⁴ and to impose their will, sometimes violently, against other races.⁸⁵ White law enforcement officers have played a role in supporting these efforts, and even today, white supremacists are concerningly present in the ranks of law enforcement personnel.⁸⁶ So it is not implausible to imagine that the overrepresentation of white officers in law enforcement agencies could contribute to scofflaw behavior.

Regardless of the gender and racial dynamics of who becomes police officers, research shows that law enforcement officers' behavior is heavily influenced by both the training and culture of law enforcement agencies. Research dating back multiple decades suggests that many prospective officers enter the police academy with idealistic views and strong ethical standards, but by the time they graduate and complete field training, those values have been altered.⁸⁷ Police-academy training frequently indoctrinates new cadets into "a police occupational culture that is deeply rooted in machismo and militarism,"⁸⁸ employing an "us v. them" orientation pitting police officers against community members.⁸⁹ Many law enforcement agencies cultivate in their officers an image of themselves as protecting certain segments of society against portions of the citizenry that are hostile to police and the law.⁹⁰ This encourages police

84. See, e.g., *Racially Disproportionate Drug Arrests*, HUMAN RTS. WATCH <https://www.hrw.org/reports/2000/usa/Rcedrg00-05.htm> [<https://perma.cc/335C-VJYS>] (last visited June 9, 2023) (documenting racial disparities in who gets arrested for drug crimes).

85. See, e.g., Robert Tsai, *Racial Purges*, 118 MICH. L. REV. 1127, 1141 (2020) (describing white Americans' efforts to exclude and remove Chinese people from the Western United States in the late nineteenth century as an "extralegal form of self-help . . . explicitly linked to demographic control to preserve white supremacy."); Rushdy, *supra* note 61, at 86 (2012); see also EQUAL JUSTICE INITIATIVE, *supra* note 63.

86. See Tsai, *supra* note 85, at 1142–43 (detailing the support and acquiescence white law enforcement officials provided to white mobs expelling Chinese people); Vida B. Johnson, *White Supremacy's Police Siege on the United States Capitol*, 87 BROOK. L. REV. 557, 564 (2022); Vida Johnson, *KKK in the PD: White Supremacist Police and What to Do About It*, 23 LEWIS & CLARK L. REV. 205, 210–11 (2019).

87. Robert E. Ford, *Saying One Thing, Meaning Another: The Role of Parables in Police Training*, 6 POLICE Q. 84, 85, 87 (2003).

88. Cooper, *supra* note 77, at 730.

89. Allison T. Chappell & Lonn Lanza-Kaduce, *Police Academy Socialization: Understanding the Lessons Learned in a Paramilitary-Bureaucratic Organization*, 39 J. CONTEMP. ETHNOGRAPHY 187, 189, 196 (2010); Madalyn Wasilczuk, *Developing Police*, 70 BUFF. L. REV. 271, 319 (2022).

90. See Robert E. Worden, *The Causes of Police Brutality: Theory and Evidence on Police Use of Force*, in POLICE VIOLENCE: UNDERSTANDING AND CONTROLLING POLICE ABUSE OF FORCE 24 (William A. Geller & Hand Toch eds., 1996).

to view civilians as “enemies in a war which must be won at all costs.”⁹¹ With this mentality, officers who are otherwise honest may justify lying and breaking the law as a means to conquer the enemy.⁹²

Seth Stoughton has written extensively about the cultural model of police officers as “warriors” who view themselves as soldiers in a never-ending battle against violence and evil.⁹³ Stoughton suggests that this warrior mentality contributes to police officers seeing themselves as above the law, existing by their “own code” and viewing legal constraints as unhelpful obstacles to enforcing the law effectively.⁹⁴ Police officers indoctrinated in the warrior mentality see themselves as the “good guys,” but are empowered in their role as good guys to do bad things to those they perceive as bad people.⁹⁵

In addition to cultivating an us versus them mentality that minimizes illegal behavior against people police officers see as their enemies, police training and culture can also communicate mixed messages about whether officers are required to follow the law, or whether they instead operate “above and outside the law.”⁹⁶ One study observing many hours of police academy training noted that recruits received confusing messages about their own responsibilities in relation to the civilians they would be policing.⁹⁷ They were told on one hand that they should not think of themselves as above the law but also told that they should not, for example, issue traffic tickets to fellow law enforcement officers and that if they used excessive force they should omit that inappropriate behavior from their police reports.⁹⁸ According to Stoughton, police “culture that privileges the police mission” over legal rules that limit how police officers execute that mission enables officers to “rationalize and justify violations of those rules.”⁹⁹ Madalyn Wasilczuk theorizes that, where the law grants police

91. Benson, *supra* note 80, at 687.

92. *See id.* at 689–90; Worden, *supra* note 90, 25–27 (noting that some officers believe “curbstone justice” is the most practical and effective way to deal with “the realities of the street”); *see also id.* at 41 (officers who bemoan legal restrictions on the use of force are more likely to use improper force).

93. *See generally* Seth W. Stoughton, *Principled Policing: Warrior Cops and Guardian Officers*, 51 WAKE FOREST L. REV. 611, 612 (2016).

94. *Id.* at 658.

95. *Id.* at 637.

96. *See* Wasilczuk, *supra* note 89, at 335.

97. *See* Chappell & Lanza-Kaduce, *supra* note 89, at 189, 202.

98. *Id.* at 189, 202–03; *see also* Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 517 (2004); Stoughton, *supra* note 93, at 637 (noting that police officers have more authority than civilians to prevent crime and disorder, which can lead them to perceive themselves as “outside the rules that govern the rest of society.”).

99. Stoughton, *supra* note 93, at 661.

officers enormous discretion in their daily work, that creates police officers who “often feel entitled to absolute authority” in their work.¹⁰⁰ Her argument is borne out by a survey of 900 officers across the country, which found that more than forty percent of the surveyed officers reported that “always following the rules is incompatible with getting their job done.”¹⁰¹

Police culture also contributes to scofflaw behavior by emphasizing loyalty at nearly any cost. Eugene Paoline has concluded that the two most distinctive attributes of police culture are group loyalty and social isolation.¹⁰² Barbara Armacost has noted that police officers “tend to circle the wagons” in the face of outside criticism, “adopting a ‘code of silence’” that requires them to protect and defend each other regardless of the reasonability or legality of their behavior.¹⁰³ In 2000, the Police Foundation surveyed 900 police officers across the United States and found that a majority reported that it was “not unusual for officers to ignore improper conduct by their fellow officers.”¹⁰⁴ More than two-thirds of the officers agreed that “police officers who report incidents of misconduct are likely to be given a ‘cold shoulder’ by fellow officers.”¹⁰⁵

With respect to social isolation, police officers routinely express that only they understand what good police work requires, and therefore no one else—and no external authority—should be allowed to decide the propriety of their behavior.¹⁰⁶ That message is reinforced by police department disciplinary policies that routinely tolerate serious misconduct by their officers and rarely impose meaningful discipline.¹⁰⁷

100. Wasilczuk, *supra* note 89, at 288.

101. See David Weisburd et al., NAT’L INST. OF JUSTICE, POLICE ATTITUDES TOWARD ABUSE OF AUTHORITY: FINDINGS FROM A NATIONAL STUDY 3 (2000), <https://www.ncjrs.gov/pdffiles1/nij/181312.pdf> [<https://perma.cc/H6DJ-F8R8>].

102. Eugene A. Paoline III, *Taking Stock: Toward a Richer Understanding of Police Culture*, 31 J. CRIM. JUST. 199, 203 (2003)

103. See Armacost, *supra* note 98, at 454; see also *id.* at 459 (citing police organizational culture as one of the most important components of understanding police misconduct and arguing that any focus on individual personality traits or characteristics of officers is insufficient to properly understand misconduct).

104. Weisburd et al., *supra* note 101.

105. *Id.* at 3.

106. Stoughton, *supra* note 93, at 663–64 (2016); Abdul El-Sayed, *The Hypocrisy of Police Rejecting Vaccine Requirements*, INCISION (Oct. 21, 2021), <https://abdulelsayed.substack.com/p/the-hypocrisy-of-police-rejecting> [<https://perma.cc/7GX5-KELJ>] (“The power to police, itself, emerges from the government’s monopoly on the use of force. Police are an embodiment of that force . . . The culture in too many police departments has internalized government force as being their power. It’s why so many abuse it. It’s also why they both push back on any form of accountability for what they do with government power.”).

107. See Moran, *supra* note 36, at 855–68; Armacost, *supra* note 98, at 495–504 (describing routine tolerance of law violations within the Los Angeles Police Department,

Through a combination of officer hiring, training, and culture, many law enforcement agencies have created a troubling dynamic of officers who regularly violate laws they perceive as unhelpful to their mission and fiercely push back against any efforts at outside regulation. But internal policing systems and culture are not alone sufficient to understand why law enforcement officers are emboldened to engage in scofflaw behavior. To understand why scofflaw behavior is so persistent, we also must examine how the legal system has enabled this behavior.

B. Systems External to Policing

The policing culture discussed in Section A. above persists because society enables it. Unchecked power is almost always prone to corruption, and law enforcement power in the United States is—and has always been—largely unchecked.¹⁰⁸ Law enforcement unions wield significant political power and have for many decades spent their power convincing politicians of both major political parties to support and fund them.¹⁰⁹ This political support shows up in many areas, from elected officials unwilling to impose restrictions on police officers' behavior to laws preventing civilians from having any meaningful role in investigating or disciplining police misconduct.¹¹⁰ The lack of oversight may be even more of a concern with sheriffs than police chiefs; while police chiefs are appointed officials and thus ostensibly accountable to city officials like mayors, sheriffs are elected.¹¹¹ Sheriffs wield tremendous power between elections, with little accountability except for the will of the voters every four years.¹¹²

Los Angeles Sheriff's Department, New York Police Department, Chicago Police Department, Boston Police Department, and others); Ford, *supra* note 87, 84–85 (concluding that police officers persistently engage in behaviors that “violate organizational policies, the canons of ethics, and the law.”).

108. See Letter from Lord John Acton to Archbishop Mandell Creighton (Apr. 5, 1887), <http://history.hanover.edu/courses/excerpts/165acton.html> [<https://perma.cc/VD26-3GSP>] (“Power tends to corrupt and absolute power corrupts absolutely.”).

109. See Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191, 1203–13 (2017) (discussing political power of police unions, including their enjoyment of “broad, bipartisan support.”); Benjamin Levin, *What's Wrong With Police Unions?*, 120 COLUM. L. REV. 1333, 1340–49 (2020) (discussing critiques of police unions' political power).

110. See, e.g., Rushin, *supra* note 109, at 1208–13 (discussing laws that provide special protections to police officers in misconduct investigations); MINN. STAT. § 626.89 subd. 17 (2023) (state law preventing civilian oversight agencies from imposing discipline for police misconduct).

111. See generally James Tomberlin, Note, “*Don't Elect Me*”: *Sheriffs and the Need for Reform in County Law Enforcement*, 104 VA. L. REV. 113 (2018).

112. See Aaron Littman, *Jails, Sheriffs, and Carceral Policymaking*, 74 VAND. L. REV. 861, 938 (2021) (noting that historically sheriffs have been “unusually insulated from electoral pressures” and “enjoy[] striking levels of job security”); Tomberlin, *supra* note

The judicial system also bears substantial responsibility for the lack of law enforcement accountability. Many scholars, including me, have noted that courts routinely defer to the difficulty of police officers' jobs and their supposed expertise in fighting crime as justifications for affirming their actions.¹¹³ The United States Supreme Court itself has repeatedly said it believes police officers rarely violate the law and instructed lower courts to be reluctant to second-guess officers' actions.¹¹⁴ Doctrines like qualified immunity protect officers from lawsuits for all but the most egregiously unlawful behavior, and indemnification prevents officers from facing personal monetary consequences even when qualified immunity does not protect them.¹¹⁵

Given the systemic lack of external accountability for law enforcement officers, it shouldn't be surprising that many officers act as if they are above the law. Part IV concludes by describing some of the harms of this behavior.

IV. HARMS OF SCOFFLAW BEHAVIOR

As a district attorney in Tennessee once cautioned new prosecutors, "It is the height of hypocrisy to enforce the law while breaking it."¹¹⁶ This same concern applies to police officers who openly break the laws they

111, at 129 ("While police chiefs generally serve at the pleasure of the politicians who appoint them, the constitutional, elected status of sheriffs prevents local officials from removing them from office."); Erika Smith & Anita Chabria, *Column: Sheriff Villanueva Acts Like He's Above the Law in L.A. County. What if He's Right?*, L.A. TIMES (May 1, 2022), <https://www.latimes.com/california/story/2022-05-01/villanueva-california-sheriff-s-untouchable-without-accountability-oversight> [<https://perma.cc/C5U9-FABN>] (complaining that California sheriffs are "invulnerable to accountability and oversight"); see also Thompson, *supra* note 53 (describing the practical difficulties in ousting elected sheriffs from office).

113. See Rachel Moran, *In Police We Trust*, 62 VILL. L. REV. 953, 961–70 (2017) (discussing judicial deference to police officers); Anna Lvovsky, *The Judicial Presumption of Police Expertise*, 130 HARV. L. REV. 1995 (2017); Alice Ristroph, *The Constitution of Police Violence*, 64 UCLA L. REV. 1182, 1210 (2017) ("[C]ourts defer almost invariably to police officers' later accounts of their perceptions of danger or resistance."); Jordan Blair Woods, *Decriminalization, Police Authority, and Routine Traffic Stops*, 62 UCLA L. REV. 672, 681 (2015) (noting the "growing trend" in legal doctrine over the past several decades to grant police officers significant discretion and authority in their interactions with civilians); Ekow Yankah, *Pretext and Justification: Republicanism, Policing, and Race*, 40 CARDOZO L. REV. 1543, 1583–88 (2019).

114. *Hudson v. Michigan*, 547 U.S. 586, 597–99 (2006); Andrew Taslitz, *Hypocrisy, Corruption, and Illegitimacy: Why Judicial Integrity Justifies the Exclusionary Rule*, 10 OHIO ST. J. CRIM. L. 419, 419 (2013); Stoughton, *supra* note 93, at 649.

115. See Joanna Schwartz, *Qualified Immunity's Boldest Lie*, 88 U. CHI. L. REV. 605, 674 (2021); Joanna Schwartz, *Police Indemnification*, 89 N.Y.U. L. REV. 885 (2014).

116. Victor S. Johnson III, *Advice for New Prosecutors*, 41 PROSECUTOR 14, 15 (2007).

are tasked with enforcing. Ekow Yankah described the harms of hypocrisy when he theorized that hypocrisy in the legal system creates a “vicious irony” by “undermin[ing] the bonds of trust and fidelity that are the very lifeblood of the rule of law.”¹¹⁷ Recent surveys indicate that many—perhaps even most—Americans do not trust police. That trust is particularly low among people of color who, due to housing and economic segregation, often experience the brunt of crime and suffer the most from ineffective and unaccountable policing.¹¹⁸

Hypocrisy also undermines security: the rule of law means very little if the people we entrust to enforce it can and do break those laws freely. When governments entrust police departments with the role of protecting people from crime, but those departments consistently betray community trust, all manner of harm results. Civilians become afraid to report crimes because they could be victimized by the very officers they call to protect them.¹¹⁹ Targets of problematic policing suffer physical, mental, and societal harms that damage their sense of security and discourage them from participating in the ordinary pursuits of work and well-being—harms that Monica Bell has brilliantly framed as “legal estrangement.”¹²⁰ In the most serious forms of misconduct, communities are ripped apart and families devastated.

While law enforcement legitimacy plummets, many law enforcement officers complain that their jobs have become harder because people do

117. Ekow Yankah, *Legal Hypocrisy*, 32 *RATIO JURIS* 2 (Mar. 2019); *see also* Taslitz, *supra* note 114, at 470 (“The legitimacy of governmental authorities, including police and the courts, flows not only from affording citizens a voice, but also by the police and the judiciary themselves abiding by the law.”).

118. *See* Jeffrey M. Jones, *Confidence in U.S. Institutions Down; Average at New Low*, GALLUP (Jul. 5, 2022), <https://news.gallup.com/poll/394283/confidence-institutions-down-average-new-low.aspx> [<https://perma.cc/3BD7-2692>]; Jeffrey M. Jones, *Black, White Adults' Confidence Diverges Most on Police*, GALLUP (Aug. 12, 2020), <https://news.gallup.com/poll/317114/black-white-adults-confidence-diverges-police.aspx> [<https://perma.cc/8AVV-2MJW>]; Monica Bell, *Black Security and the Conundrum of Policing*, JUST SECURITY (July 15, 2020), <https://www.justsecurity.org/71418/black-security-and-the-conundrum-of-policing/> [<https://perma.cc/7BDY-2UFB>].

119. *See, e.g.*, Melissa Segura, *A Chicago Attorney Is Getting Justice For Hundreds of Wrongfully Convicted People All at Once*, BUZZFEED NEWS (Jan. 11, 2023), <https://www.buzzfeednews.com/article/melissasegura/josh-tepfer-mass-exonerations-wrongfully-convicted> [<https://perma.cc/T6EW-8EPT>] (Cook County State’s Attorney acknowledging that residents of Chicago living in neighborhoods most impacted by violence may not call the police about crime in part because police officers have falsified cases in the past and can’t be trusted).

120. *See* Monica Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 *YALE L.J.* 2054 (2017).

not trust them.¹²¹ But too rarely do those same officers reflect on their departments' own role in creating or contributing to this distrust. Scofflaw behavior hampers officer morale by contributing to animosity between officers and the communities they police. Police officers depend heavily on members of the public to solve crime; when officers have ruined that relationship by alienating the public through scofflaw behavior, they make their own jobs more difficult and communities less safe.¹²²

V. CONCLUSION

Law enforcement officers regularly break the law. Too many discussions about how to change policing fail to acknowledge this simple fact, or to understand the many reasons law enforcement officers engage in scofflaw behavior. Understanding the how and why of scofflaw behavior has implications for many of the major questions at the center of today's policing conversations, including discussions about whether policing is reformable at all. Importantly, the law violations discussed in this article are not the product of lack of training or lack of funding, though different training could perhaps mitigate or prevent some of these behaviors. Rather, the law violations discussed here are the result of officers' intentional choices to break the law, empowered by departmental cultures and legal systems that have, despite much public handwringing about policing, shown little interest in serious commitment to change. Without understanding the motivations for scofflaw behavior and the many ways society enables this behavior, we will continue to make sparse progress in providing safe and equitable law enforcement services for all.

121. See Rich Morin et al., *Behind the Badge*, PEW RESEARCH CENTER (Jan. 11, 2017), <https://www.pewresearch.org/social-trends/2017/01/11/behind-the-badge/> [<https://perma.cc/9G7B-RKDN>].

122. See TOM R. TYLER & YUEN J. HOU, TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND THE COURTS 200–02 (2002) (“Community residents who do not question the legitimacy of the police are more likely to cooperate with legal authorities, to defer to them voluntarily, and to obey laws. They are also more likely to report crimes and criminals, to help solve crimes by coming forward as witnesses, and to generally act in law-abiding ways.”).