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The Origins of New York's Stop-and-Frisk: Police, Race and Civil Rights Activism, 1957-1968

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ABSTRACT

The Origins of New York's Stop-and-Frisk: Police, Race, and Civil Rights Activism, 1957-1968

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This dissertation examines the origins and social impact of New York's stop-and-frisk law, which authorizes police to stop, question and frisk people without a warrant or probable cause to believe crime was committed. Several observers associate it with a recent history of racial profiling, or police practices of 1990s aimed at reducing violent crime in urban areas, or much earlier national law enforcement policy that developed in the 1980s to combat war on drugs. A closer examination reveals deeper roots of stop-and-frisk, exposing its long history as a police practice that suddenly developed into criminal procedure law to limit Fourth Amendment rights and further expand police powers at a critical time in U.S. history. During the 1960s law enforcement agents lobbied for the new stop-and-frisk law. This dissertation shows that enforcement of stop-and-frisk law and vigorous challenges to it by Black New Yorkers was a major battle of the 1960s.

Historians, however, have neglected to include northern struggles for greater criminal defendant rights and search and seizures reform and in narratives of the modern Civil Rights Movement. The Nation of Islam, a radical Black religious group, also protested unreasonable police stops and searches, and advocated for poor people in criminal courts. Yet their interventions are largely overlooked and under-analyzed. Scholars argue law enforcement bureaucrats wanted the law as part of the police professionalization movement. This work expands that research and considers the intersections of Black struggles for civil rights and criminal defendants' fight for justice. It also shows the new statute arose as a riposte to liberal federal court decisions and from New York Governor Nelson A. Rockefeller's political

aspirations, which scholars commonly overlook. This research corrects these gaps and expands historiographies on policing and imprisonment during the postwar civil rights era.

Based on extensive archival research, this dissertation finds that the expansion of New York State's police powers precipitated an earlier emergence of the carceral state and had a direct connection to urban protest and civil rights assertions. Furthermore, stop-and-frisk law in New York has contemporary relevance for millions of Americans. Given that today more than one million Black people are warehoused in prisons across the United States, it is, therefore, essential to understand the legacy of the 1960s law enforcement policy, struggles against it in the streets and local courts and its connection to Black incarceration.

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PREFACE

While serving as a prosecutor for the New York County District Attorney's Office, I came to discover racial bias built into police enforcement of stop-and-frisk. This criminal procedure law authorizes police to stop, question and search people without a warrant, but based on "reasonable suspicion" of a crime. It was summer 2005 when I interviewed two New York City Police Department (NYPD) officers about a search and seizure they made in Harlem, a predominantly Black neighborhood in Northern Manhattan. They recounted having observed two Black youth and a white woman in an idling car. Next, the youths exited the car and entered a building complex. Suspecting that the three were involved in crime, the officers approached to question the driver, who told them that she was waiting for her cousins. The police warned her that "it was a dangerous neighborhood," but instead of leaving, she waited. When the youth returned, the policemen stopped and frisked them. While conducting the frisk—which consisted of a pat down of their outer clothing—the officers discovered no evidence of crime, yet their investigation continued. They escalated it to a full search, telling both youths to empty their pockets, and remove their shoes, at which point the officer discovered drugs. Consequently, they arrested the young men, charging them with "Possession of a Controlled Substance with Intent to Sell," a felony that carried over a year imprisonment. I then interviewed the arresting officers about the basis for suspicion. I was shocked after asking why they let the woman go, in light of their view that she had been involved in a crime, and was an accomplice. An officer candidly replied, "She was white, and besides we *knew* the men were carrying drugs." Although the policemen doubted the woman's claim of a familial tie to the Black youth, and found her suspicious for being in a poor section of Harlem, they did not investigate her further, frisk her for weapons, as would have been routine, or question her possible involvement in drug trafficking.

For the two Black males, the police alleged they followed stop-and-frisk policy, but in reality they exceeded the limits of the law by conducting a full search without a warrant and without articulating the required legal basis of "reasonable suspicion" to believe the youth had committed a crime or were in the process of doing so. I had serious doubts that their behavior conformed to "reasonableness" under the U.S. Constitution, and Supreme Court law, which require the police to be objective in their observations and articulate some reviewable grounds to determine a "reasonable basis" to suspect a man's guilt and then permit the police search and arrest.[1] As for the woman, the officer stated her "whiteness" was the "reasonable basis" for him not to enforce stop-and-frisk law.[2] I ultimately dismissed the case, believing that the initial police stop was based on the youths' "Blackness," and that race connoted the legal basis for the police stop-and-frisk. Their race caused police to suspect them and conduct the search, otherwise nothing unusual happened that day except policemen had a "mere belief" that the youths "were carrying drugs."

Soon after this incident, I noticed increased media and scholarly attention to stop-and-frisk police encounters. According to numerous studies as well as their own statistics, New York City Police Department selectively enforced stop-and-frisk on city streets, routinely surveilling and searching Black and Brown civilians, particularly youth from poor sections of the city.[3] Approximately 532,911 civilians were stopped and searched by police on New York City streets

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[1] Fourth and Fourteenth Amendments of U.S. Constitution; *Terry v. Ohio* 392 U.S. 1 (1968).

[2] Ironically, former New York City Mayor, Michael R. Bloomberg had criticized New York City Police Department for "disproportionately stop[ping] whites too much, and minorities too little" while investigating violent crimes and murder suspects. David W. Chen, "Bloomberg Says Math Backs Police Stops of Minorities," *New York Times*, June 28, 2013.

[3] "Accounting Office, Racial Profiling Limited Data Available on Motorist Stops," GAO-GGD-00-41, July 13, 2000, http://www.gao.gov/AIndexFY00/title/tocR.htm; "Civil Rights Bureau, Office of the Attorney General of the State of N.Y. The New York City Police Department's "Stop & Frisk" Practices," (1999): 89 [hereinafter OAG REPORT]; Jeffery Fagan and Garth Davies, "Street Stops and Broken Windows: Terry, Race and Disorder in New York City," *Fordham Urban Law Journal*, 28 (2000): 457.

in 2012 alone.[4] Fifty-Five percent of the people stopped were Black and thirty-two percent were Latino, although at the time only twenty-three percent of New York City's population was Black and twenty-nine percent was Latino.[5] Law enforcement officials had argued that stop-and-frisk was necessary to combat violent crime and remove weapons from the streets.[6] Yet eighty-nine percent of the residents that police had stopped were innocent, and neither given a summons nor arrested.[7] A year after the NYPD released these statistics, a white officer arrested African American studies scholar, Henry Louis Gates, Jr., leading president Barack Obama to comment "there's a long history in this country of African Americans and Latinos being stopped by law enforcement disproportionately."[8] I left the District Attorney's Office, deciding to explore more in depth the historical roots of this controversial criminal procedure.

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[4] "Stop-and-Frisk Data," *New York Civil Liberties Union,* http://www.nyclu.org/content/stop-and-frisk-data (accessed 15 Sept. 2013) [hereinafter NYCLU Stop-and-Frisk Data].

[5] NYCLU Stop-and-Frisk Data.

[6] Instead of finding weapons during these searchers, police typically discovered marijuana, thus making marijuana arrests a major byproduct of stop-and-frisk enforcement. See "Analysis Finds Racial Disparities, Ineffectiveness in NYPD Stop-and-Frisk Program; Links Tactic to Soaring Marijuana Arrest Rate," *New York Civil Liberties Union*, May 22, 2013, http://www.nyclu.org/news/analysis-finds-racial-disparities-ineffectiveness-nypd-stop-and-frisk-program-links-tactic-soar (accessed September 10, 2013).

[7] NYCLU Stop-and-Frisk Data.

[8] Chen, "Bloomberg Says Math Backs Police Stops of Minorities."

NOMENCLATURE

Throughout this study, “Black” is capitalized as a proper noun to reflects the self-naming and self-identification of a people. Black as a categorization of identity is not natural, inherent or biological. As any racial category, Black is always in flux, and constitutes a complex political, economic and cultural process that is ideologically, socially and culturally constructed. Black includes both African American and Black diasporic people. It replaces signifiers of social domination and privilege that have been used in various archival data—the U.S. census, court records and cases from the U.S. Supreme Court, New York and other states, New York Police Department Records and records from civil rights organizations—used in this study. Situations where race is listed as Black Hispanic or Puerto Rican are noted.

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CHAPTER ONE

INTRODUCTION

This dissertation is the first full academic study to examine the highly contested origin and initial impact of New York state's 1964 stop-and-frisk law. I argue that the law was forged in reaction to a 1961 US Supreme Court ruling, *Mapp v Ohio,* which constituted an historic expansion of defendants' rights and a significant restraint on local law enforcement's ability to search citizens at will. Moreover, I show the tremendous outpouring of protest and dissent to stop and frisk that both preceded the law and continued in its aftermath. The 1964 stop-and-frisk law is part of criminal procedure, which is meant to regulate the apprehension, prosecution, trial and punishment of persons who have violated criminal laws.[1] Criminal procedure governs what happens to people accused of crimes, yet its scope also extends beyond the criminal justice system, impacting the everyday lives of millions of people who encounter the police. Ever since the 1960s, stop-and-frisk in New York State has authorized law enforcement to stop, question and search people without a warrant or probable cause as ostensibly required by the Fourth Amendment of the U.S. Constitution.

This dissertation makes several key interventions into the academic scholarship on criminal justice, policing, and resistance to search and seizure practices. It questions the body of scholarship that frames stop and frisk as a law enforcement policy synonymous with contemporary racial profiling or as the genesis to the 1980's "War on Drugs." Instead this dissertation argues that stop-and-frisk law arose from different circumstances, and a much longer history, which has been overlooked by historians of postwar civil rights movement and scholars of criminal justice. This project explores the connections between Supreme Court decisions that

[1] *Black's Law Dictionary*, 2nd ed. http://thelawdictionary.org/criminalprocedure/#ixzz2f4TYLliz

expanded criminal defendants' rights during the modern civil rights movement; the push and pull of Black communities' need for law and order, and protection from police misconduct; as well as the aspirations of political leaders. I ask how turning attention toward court cases complicates our understanding of search and seizure practice, particularly the roles race, class, gender and religion play in criminal justice outcomes? And while historians, sociologists, critical race theorists and other scholars have examined multiple facets of the American criminal justice system, and various causes of the U.S. prison boom, few scholars have considered the relationship—prior to the 1970s—between police search and seizure practices and the development of mass incarceration prior. I argue that New York's 1964 stop-and-frisk law was nationally influential, since within five years of its passage almost a dozen other states followed suit.[2] In New York, the new law strengthened an officer's power to make arrests, which almost immediately increased the local jail population, and attendant overcrowding, which led officials to demand prison expansion outside urban areas, well before Governor Nelson Rockefeller signed punitive drug laws in the early 1970s.

Many observers associate the widespread use of stop-and-frisk in New York City with Mayor Rudolph Giuliani, who during the early 1990s adopted the "Broken Windows" policy predicated on the theory that targeting minor offenses would reduce more serious crime.[3] With "Broken Windows," Giuliani and NYC Police Commissioner William Bratton encouraged police to use stop-and-frisk aggressively against minor offenses.[4] As sociologists and legal scholars began investigating the racial disparity of police stops, they linked these police practices

[2] After New York several states passed similar stop-and-frisk laws, such as Arizona, California, Delaware, Illinois, Massachusetts, Michigan, Nebraska, North Dakota, Pennsylvania, South Carolina and Tennessee.
[3] Kelling and Wilson, "Broken Window."
[4] David A. Harris, *Profiles in Injustice: Why Racial Profiling Cannot Work*. (New York: New Press, 2003); George L. Kelling and James Q. Wilson, "Broken Window: The Police and Neighborhood Safety," *The Atlantic*, March 1, 1982.

to the "war on drugs," during the 1980s, when law enforcement officers were trained to racially profile, specifically considering skin color, race, and ethnicity as grounds for criminal suspicion and the "reasonable cause" for stopping and searching a person.[5] However, what these scholars have failed to recognize is that as early as 1964, New York Governor Nelson Aldrich Rockefeller proposed an anti-crime package, including a call for stop-and-frisk, and other changes to New York's criminal procedure laws.

The central questions raised in this dissertation are: what motivated the liberal Empire State to pass a stop-and-frisk law and its companion anticrime criminal procedures? What role did law enforcement officials play in its development? How did this seemingly race neutral law impact Black communities and socially marginalized groups in New York City? What techniques did activists and advocates in the Civil Rights Movement use and develop to counter ever increasing police powers?

Rockefeller claimed that stop-and-frisk was necessary to combat violent crime, even though crime was not greater than it had been a decade prior. Nonetheless, media stories gave weight to Rockefeller's assertion. Shortly after Rockefeller signed the stop-and-frisk law, the *New York Times* published a series of uncorroborated articles on the so-called Harlem Blood Brothers, an alleged gang of Harlem youth who vowed to kill white people and attack police. In contrast to the governor's rationale, I contend that the new law was a law and order backlash against the judicial branch. It represented a way around the landmark decision in *Mapp v. Ohio* (1961), which was the first time the Supreme Court applied the Fourth Amendment's prohibition

[5] Profiling began as race neutral federal law enforcement policy. It became a racially driven during the 1980s, when Operation Pipeline trained both local and federal law enforcement agents to use race as a key factor for determining who to stop and investigate as a drug courier. Harris, *Profiles in Injustice*; Brian Withrow, *Racial Profiling: From Rhetoric to Reason*. (Upper Saddle River: Pearson/Prentice Hall, 2006); Franklin E. Zimring, *The City that Became Safe: New York's Lessons for Urban Crime and Its Control*. (New York: Oxford, 2011).

against illegal searches and seizures to state criminal courts. The Court also imposed the exclusionary rule that ordered state courts to exclude any evidence police illegally obtained without a search warrant or probable cause to believe a crime had been committed or was being committed.[6] *Mapp*'s probable cause standard required an officer have a confirmed belief that a crime had existed and this generated probable cause to make arrest and conduct a search. The rationale behind the Court's decision was to deter police from searching people "merely based on a hunch or suspicion." Rockefeller's 1964 law reshaped criminal procedure law away from the new federal rule, and lowered the legal standard for police to search people. The state's stop-and-frisk law authorized law enforcement to stop, question and frisk individuals not based on probable cause, but a mere "reasonable suspicion" of a crime. This distinction between probable cause and reasonable suspicion may seem arcane but it has had an extraordinary impact on the practice of criminal law in New York State and on the lives of African American residents.

Scope: 1957-1968

In 1957, police conducted a warrantless search and seizure at the home of Dollree Mapp, a Cherokee and Black woman, who lived in a predominantly white suburban neighborhood of Cleveland Ohio. A product of the Second Great Migration, Mapp moves north, and defying the city's de jure housing segregation, she settled in Shaker Heights. Police arrested Mapp based on evidence recovered during the search, and a criminal court convicted her. In 1961, Mapp raised the Fourth Amendment right before the U.S. Supreme Court, which found in her favor, extending Fourth Amendment protections to citizens not just in federal courts but in state criminal courts. Since most crime is prosecuted in state courts, this ruling set in motion a dramatic change in the relationship between people accused of crimes and law enforcement around the country. This

[6] Mapp v. Ohio, 367 U.S. 643 (1961).

dissertation begins with Mapp's police encounter in 1957, and follows the trajectory of search and seizure law until 1968 when the Supreme Court retreats from *Mapp*'s bold protections in the decision, *Terry v. Ohio*.[7]

The scope 1957-1968 is a pivotal time for criminal justice and the Civil Rights Movement.[8] Sociologist and African American scholar, Aldon Morris analyzes social movements in the South from 1953 and 1963, and considers this period to be the origins of the "modern civil rights movement."[9] Meanwhile, the New York state legislature hastily passed stop-and-frisk after less than two and a half hours of deliberation, and the law went into effect a day before Congress passed the Civil Rights Act of 1964. The Civil Rights Act and Voting Rights Act of 1965 ostensibly marked the end of *de jure* Jim Crow segregation. In actuality, I argue that law enforcement did not retreat from Jim Crow; stop-and-frisk may have been race neutral, but it continued a race-based system of governance and policing.

This time frame is important for understanding stop-and-frisk because of two additional contextual factors. First, stop-and-frisk emerged during the FBI's Counter Intelligence Program (1956-1971). The FBI's COINTELPRO operations aimed to discredit and destroy racial targets through psychological warfare, disinformation campaigns, harassment, wrongful imprisonment, extralegal violence and assassination.[10] COINTELPRO officials worked with local police, including the NYPD, to target political radicals, but also they saw a connection between the angry Black men, women and youth of the 1960s who protested for civil rights and resisted

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[7] Terry v. Ohio, 392 U.S. 1 (1968).

[8] Criminologists refer to this important period as late modernity. For further discussion see David Garland's theory of late modernity in *The Culture of Control: Crime and Social Order of Contemporary Society*. (Oxford: Oxford University Press, 2011) viii-ix, 94-99.

[9] Aldon Morris, *The Origins of the Civil Rights Movement: Black Communities Organizing for Change.* (New York: Free Press, 1984) vi, x, xii-xiii.

[10] Kenneth O'Reilly, *"Racial Matters": the FBI's Secret File on Black America, 1960-1972*. (New York: Free Press, 1989).

unjust law enforcement and brutality. Hoover's primary goal was to find the "Black Messiah," and prevent the "rise of a leader who might unify and electrify these violent prone elements [and] prevent these militants from gaining respectability" and growth among America's youth.[11] Governor Rockefeller recruited from the FBI's echelon to lead New York's police training and reform movement. In 1961, the same year of the *Mapp* decision, Rockefeller appointed FBI special agent Arthur Cornelius as the superintendent of the state police. He later created special police forces that surveillanced civil rights activists. Second, New York's stop-and-frisk immediately preceded the start of urban uprisings of the mid-to-late 1960s.[12] This is relevant background because two weeks after police began to enforce the new law, a riot erupted in Harlem and Bedford Stuyvesant after a police stop and fatal shooting of 15-year-old James Powell.[13] In Watts, a police stop and arrest of a black motorist, Marquette Frye, became a flashpoint for anger against the police and precipitated a five day rampage that cost 200 million dollars in property damage, killed 34 Black Angelenos, and injured thousands more.[14] The "long hot summer" of 1967 brought unprecedented violence with major riots in Detroit and Newark.[15] In Newark, James Smith was the victim of a brutal police stop, search and arrest.[16] The Newark riot began over the Black community's frustration with police harassment, and several

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[11] Ward Churchill and Jim Vander Wall. *The COINTELPRO Papers: Documents from the FBI's Secret Wars Against Dissent in the United States*. (Cambridge: South End Press, 2002) 107; Cointelpro.org <http://www.icdc.com/~paulwolf/cointelpro/churchfinalreportIIIc.htm>.

[12] John F. McDonald, *Urban America: Growth, Crisis, and Rebirth*. (Armonk: M.E. Sharpe, 2008) 134-154; Robert H. Connery ed., *Urban Riots: Violence and Social Change*. (New York: Columbia University, 1968); Doug McAdam, "Tactical Innovation and the Pace of Insurgency." *American Sociological Review* 48 (1983): 735-754.

[13] McDonald, *Urban America*, 135. A massive public demonstration was organized by CORE against police brutality and the police's violent response to the demonstrators instigated the New York riot, which spread from Harlem to Bedford Stuyvesant in Brooklyn.

[14] Gerald Horne, *Fire This Time: the Watts Uprising and the 1960s*. (Charlottesville: University Press of Virginia, 1995); McDonald, 137.

[15] Manning Marable, *Race, Reform and Rebellion: the Second Reconstruction in Black America, 1945-1990*. (Jackson: Mississippi UP, 1991), 93.

[16] Tom Hayden, "The Occupation of Newark" *New York Review of Books*. August 24, 1967; T. J. English, *The Savage City: Race, Murder, and a Generation on the Edge*. (New York: Harper Collins, 2011).

unprosecuted police brutality incidents.[17] The prevalence of police harassment in Black communities led concerned Black youth to found the Black Panther Party (1966), which spread to northern and southern cities, and monitored police in the streets.[18] Federal law enforcement policy intersected with local police departments to jointly destroy the BPM and BPP. The federal government sanctioned local police attacks against Black radicals and equally ignored the routine racial profiling in the Black community. Examining federal law enforcement's collaborations with NYPD broadens understanding of the power of stop-and-frisk law and how it became more professionalized, and eventually immune to constitutional challenge.

Methodology and Theoretical Framework

This dissertation takes a multidisciplinary approach to explore the historical development of New York's stop-and-frisk law and the protest movements that formed against it as well as overall police practices in Black communities. I draw from scholarship in history, criminology, critical race theory, feminist theory, intersectional studies, sociology, law, and political science. But most significantly, this dissertation draws upon my expertise in legal studies and African American studies. As an historical project, I use archival sources, court cases, legislative acts, crime data, census and government records, including recently released records from the national office of the American Civil Liberties Union (ACLU) in order to chart law enforcement search and seizure practices and community resistance to policing Black political radicals, neighborhoods and individuals since 1964. Several archival sources documenting law

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[17] Kevin J. Mumford, *Newark: a History of Race, Rights, and Riots in America*. (New York: New York University Press, 2007); Joseph Boskin, "The Revolt of the Urban Ghettos, 1964-1967." *The ANNALS of the American Academy of Political and Social Science*. 382 no. 1 (March 1, 1969): 1-14, 5.

[18] Stokely Carmichael and Charles Hamilton, *Black Power: the Politics of Liberation.* 1967 (New York: Vintage, 1992); Bobby Seale, *Seize the Time: the Story of the Black Panther Party and Heuy P. Newton*. 1970 (Baltimore: Black Classic, 1991); Heuy P. Newton, *Revolutionary Suicide*. 1973 (London: Penguin, 2009); Assata Shakur, *Assata: An Autobiography*. 1987 (Chicago: Lawrence Hill, 2009).

enforcement race-based policies are available online, including selections from the FBI COINTELPRO.[19] Archives from several civil rights organizations—ACLU and the NAACP—contain documents regarding police practices in Black communities. The Brooklyn Historical Society holds valuable archival material related to Congress of Racial Equality (CORE), the Brooklyn chapter, and its many battles against law enforcement, illegal search and seizure and civil rights.[20]

I review the McCone and Kerner Commission Reports as source material for explaining the role that law enforcement played in civil unrest and what recommendations were made for future consideration. I draw from autobiographical works, and contemporaneous media accounts to test the credibility of different subjects whose experiences with criminal justice and search and seizure form the basis of the narrative used in the chapters. New York newspapers also provide important context and narratives for understanding Black discussions of *Mapp v. Ohio*, stop-and-frisk, and police practices. I draw upon the mainstream press, such as the *New York Times* and *New York Amsterdam News*, as well as Black radical periodicals, such as the *Muhammad Speaks* and the *Liberator*. I have also examined several original editions of the *Black Panther* newspaper, pamphlets and ephemera at Northwestern University's Charles Deering Library of Special Collections. These media accounts helped me to evaluate the aftermath of stop-and-frisk in Black and poor communities and form the conclusion of the dissertation.

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[19] http://www.archive.org/details/FbiSecretCointelproDocumentsAgainstBlackCommunity.

[20] Congress of Racial Equality (CORE) was founded in 1941 as an outgrowth of Fellowship of Reconciliation (FOR), an interracial, pacifist, Quaker-led group. For a brief history of CORE, see Alan B. Anderson and George W. Pickering, *Confronting the Color Line: The Broken Promise of the Civil Rights Movement in Chicago.* (Athens: The University of Georgia Press, 1986); August Meier and Elliott Rudwick, *CORE; A Study in the Civil Rights Movement, 1942–1968.* (New York: Oxford University Press, 1973); James R. Ralph, Jr., *Northern Protest: Martin Luther King, Jr., Chicago, and the Civil Rights Movement.* (Cambridge: Massachusetts, 1993); Brian Purnell, *Fighting Jim Crow in the County of Kings: The Congress of Racial Equality in Brooklyn (Civil Rights and Struggle).* (Kentucky: University Press of Kentucky, 2015), 129-169, 133-34.

Literature Review

In histories of the postwar civil rights movement, protest against New York's stop-and-frisk and the nation's largest police force search and seizure practices have gone under recognized.[21] Sociologist Aldon Morris explores the origins of the civil rights movement, "focusing on the crucial first ten years of the modern movement, 1953-1963." He examines how social organizations and Black churches launched struggles in the South.[22] He finds these movements stemmed from the Black church, which provided finances for protest, and an organized mass base, comprised of everyday people.[23] However, Morris' foundational scholarship overlooks a much longer history of civil rights activism in the urban North and the role played by the Nation of Islam, which was an active religious group, firmly entrenched in the protest community at the temporal period Morris discusses. Morris' work reflects the historic separation between civil rights and civil liberties. At the time, most civil rights organizations and advocates in the South focused on desegregation and inequality, rarely did they launch widespread protest campaigns against police abuse of power, or Jim Crow in criminal courts.[24] Martha Biondi's history focuses on postwar New York City and various protest campaigns against police brutality in Black neighborhoods.[25] And Thomas Sugrue chronicles a nationwide

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[21] Aldon Morris, *The Origins of the Civil Rights Movement: Black Communities Organizing for Change.* (New York: Free Press, 1984); Martha Biondi, *To Stand and Fight: the Struggle for Civil Rights in Postwar New York City* (Cambridge: Harvard University Press, 2003); Marilynn S. Johnson, *Street Justice: A History of Police Violence in New York City.* (Boston: Beacon Press, 2004); Thomas Sugrue, *Sweet Land of Liberty: the Forgotten Struggle for Civil Rights in the North*. (New York: Random House, 2009).

[22] Morris, *The Origins of the Civil Rights Movement*, vi, x, xii-xiii.

[23] Morris, 4, 7-8

[24] Little progress was possible against Jim Crow in the South's criminal justice system because the sheriff controlled law enforcement policy and practices and judges generally reinforced Jim Crow practices in court. Morris points out by the late 1950s McCarthyism further devastated criminal defendant causes after Southern states banned most civil rights organizations, including local chapters of the NAACP, claiming these organizations and advocates were Communist sympathizers.

[25] Biondi, *To Stand and Fight*, 15, 287.

context for upsurge in Black protest.[26] Biondi includes advocacy for greater Fourth Amendment protections decades before the *Mapp* decision, concluding that this period of struggle "changed the social, political and cultural landscape of New York City."[27] Morris, Biondi and Sugrue provide seminal works of this history and each recognize that religious institutions figured prominently for advancing civil rights, however, neither analyzes the NOI's contributions to this protest history. Scholar Marilynn S. Johnson's history of NYPD includes an analysis of protests against police brutality during the early 1960s.[28] However, Johnson neglects to consider Rockefeller's criminal justice policies which increased police powers and limited people's Fourth Amendment protections in courts.[29] I fill the gaps left by this scholarship by analyzing the aftermath of the *Mapp* decision to provide an in-depth description of police encounters that involved questionable stops and illegal searches as well as the NOI's understudied pushback and abilities to rally support for individual victims.

In addition, I examine how civil rights organizations fought against police violations of individuals' rights and advocated in criminal justice. The Brooklyn chapter of CORE fought police brutality, illegal searches, and Jim Crow inequality within the criminal justice system. Historian Brian Purnell argues that CORE's Brooklyn chapter was the most active chapter in the North.[30] However, Purnell disregards its activism against Fourth Amendment violations, illegal searches, and their claims that it often led to brutality, retaliatory arrests, and wrongful death. This dissertation covers that gap, examining major struggles for New Yorkers. I also focus on the ways that leadership from Brooklyn and Bronx chapters of CORE assumed a unique position

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[26] Sugrue, *Sweet Land of Liberty*.
[27] Biondi, 272.
[28] Johnson, *Street Justice,* 229-234, 286.
[29] These tensions between police and the Black community and activism around search and seizure will come into full view in 1964 after the passage of New York's stop-and-frisk law, discussed later in chapter five.
[30] Purnell, *Fighting Jim Crow in the County of Kings*, 133-34.

to investigate criminal matters. Indeed, I argue that "investigative activism" was an early, and critically important insurgent stance that emerged from the civil rights movement's engagement with urban criminal justice regimes.

Finally, this dissertation argues that stop-and-frisk provides an important nexus between policing, and criminal justice policy that facilitated the emergence of mass incarceration. Many scholars consider the "war on drugs" and the mandatory minimum sentences enacted to combat it as the major cause for the emergence of a "prison industrial complex."[31] Scholar Loic Wacquant theorizes that this prison population boom created the "carceral state."[32] Scholar Elizabeth Hinton adds that the carceral state constitutes the police, sheriffs, and marshals responsible for law enforcement, as well as the judges, prosecutors and defense lawyers. Sociologist and legal scholar David Garland defines this mass imprisonment in society as "a rate of imprisonment that is markedly above the historical and comparative norm for societies of this type." Accordingly, the policy of incarceration "ceases to be the incarceration of individual offenders and becomes the systematic imprisonment of whole groups of the population."[33] In *The New Jim Crow*, Michelle Alexander references the mass imprisonment of Black people as both a continuity of Jim Crow and new legal practices of racial injustice.[34] This dissertation theorizes police search practices and stop-and-frisk as an extension of America's carceral state, and also as a critical precursor. In sum, the origins of the modern carceral state lie as much in the reaction to the long postwar civil rights era and second great migration as the war on drugs of the 1980s.

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[31] Angela Y. Davis, *Are Prisons Obsolete?* (New York: Seven Story Press, 2003); Manning Marable, *The Great Wells of Democracy: the Meaning of Race in American Life*. (New York: Basic Civitas Books, 2002).
[32] Loic Wacquant, "Deadly Symbiosis: When Ghetto and Prison Meet and Merge." *Mass Imprisonment: Social Causes and Consequences*. E. David Garland (New York: Sage Publications, 2001)
[33] David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*. (Chicago: Chicago UP, 2001), 5-6.
[34] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. (New York: New Press, 2010).

Chapter Overview

Chapter two takes an intersectional approach to understand how segregation and heterosexism impact Dollree Mapp's ability to navigate the criminal justice system. While several scholars write about *Mapp v. Ohio*, they focus on the plaintiff's victory in Supreme Court, which advanced Fourth Amendment rights to all citizens. Few focus Dollree Mapp's lower court case in which she speaks of the sexually intrusive police search. No one explores how courts could convict Mapp on pornography charges without first establishing that the evidence illegally seized by police was in fact pornographic. This chapter theorizes how this oversight occurred. It also provides the background for understanding law enforcement's immediate push for New York's stop-and-frisk law and other punitive criminal procedures.

Chapter three explores post-*Mapp* struggles for Fourth Amendment rights in New York. It analyzes how *Mapp* changed the law and whether this impacted social life for Black New Yorkers in the early 1960s. Drawing upon Black radical press, the *Muhammad Speaks* and *Liberator* the chapter makes a major intervention into civil rights history, exposing unexplored activism by Nation of Islam (NOI) members, who led vigorous protests against arbitrary police stops, searches and unjust criminal prosecutions in New York post-Mapp, between 1961 and 1963. The chapter demonstrates the varied efforts and tactics of protest, which included investigative work, organizing and collaborating with other civil rights organizations to resist unreasonable police searches, brutality, and contested arrest Their activism against unfair criminal procedures and abuse of police powers never rose to the level of public consciousness that it deserved, but it did impact courts and criminal defendant rights to free representation, prior to Supreme Court landmark ruling.

Chapter four analyzes police encounters in 1963, two years after *Mapp*. In that year alone several police violations of Fourth Amendment rights conveys the physical stakes of NYPD encounters with Black, Puerto Rican, middle-class and poor New York City residents. I focus on two local chapters of Congress of Racial Equality (CORE), a major civil rights organization that defended the rights of Black New Yorkers who found themselves in police custody. The central questions are: What effect did *Mapp* have on police search practices? What were the physical stakes and risks when police violated search and seizure rights? How did CORE use the Supreme Court decision in *Mapp v Ohio* to advocate for people? How did Brooklyn CORE's leadership collect evidence to investigate police violations and violence? In addition to employing non-violent demonstration tactics, what other tools did CORE members develop to fight social death?

Chapter five explores the complex motivations that led Governor Nelson Rockefeller to support a new and augmented police search and seizure power. He proposed police-supported stop-and-frisk and "no-knock" laws. Several scholars argue that law enforcement bureaucrats lobbied for stop-and-frisk laws to gain greater control over day-to-day police practices. I extend the scope of this argument, asserting further that the laws originated as a reaction to *Mapp*'s expansion of criminal defendant rights, and Rockefeller's political aspirations. I also theorize that law enforcement's antagonism towards *Mapp* directly influenced Rockefeller and show how he ultimately folded these concerns within his aggressive agenda to reform criminal justice and political aspiration to become U.S. President. Activists and advocates began to protest immediately after Rockefeller proposed stop-and-frisk, and continued after it went into effect. Brooklyn CORE and local branches of the NAACP targeted Rockefeller, NYC Police Commissioner and precincts, as well as New York's 1964 World Fair exhibition. Thousands of

New Yorkers opposed illegal searches and the new stop-and-frisk law, fearing brutality and unjust arrests.

The conclusion chapter recaps major finding and reveals the social consequences of stop-and-frisk enforcement in New York. It demonstrates the law was nationally influential, setting in motion other states to enact similar stop-and-frisk laws. After police began enforcing the law, the state funneled more people into local jails.[35] I examines statistics from 1965 to 1966 and finds changes in New York arrest patterns.[36] A spike in arrests led to a dramatic increase in New York City's local jail population. Rockefeller's general counsel noted New York's prison population increase coincided with enforcement of stop-and-frisk. This dissertation maintains police stop-and-frisk practices played a role in sparking the urban uprisings from the Harlem riot of 1964 to the Watts riot of 1965 that resulted in 200 million dollars in property damage and the death of 34 Black Angelenos, and the "long, hot summer" of 1967.[37] This dissertation concludes with an analysis of *Terry v. Ohio* (1968), the seminal case that upheld the constitutional merits of stop-and-frisk. The Supreme Court consolidated *Terry* with two lesser-known cases from New York, *New York v. Sibron* and *Peters v. New York,* which specifically addressed New York's stop-and-frisk statute.[38] Ultimately, the Court backtracked from *Mapp*, its previous liberal approach to regulate state law enforcement officers and supported a stance more favorable to law

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[35] Figures in a national study, from 1965 to 1966, revealed that 22 percent of the 23 year olds in the study had been arrested for a minor offense other than traffic violation, and arrest rates were higher for black men and for youths living in poor urban areas. *Bureau of Labor Statistics, US Department of Labor.* <http://www.bls.gov/nls/oldyoungmen.htm> ; Erica Goode, *Many in U.S. Are Arrested by Age 23, Study Finds*. *New York Times*. December 19, 2011. <http://www.nytimes.com/2011/12/19/us/nearly-a-third-of-americans-are-arrested-by-23-study-says.html>.

[36] Annual Report on the State Police (1964-1965). Rockefeller Gubernatorial Records, Rockefeller Archive Center, Sleepy Hollow, New York.

[37] Gerald Horne, *Fire This Time: the Watts Uprising and the 1960s*. (Charlottesville: University Press of Virginia, 1995). McDonald at 137; Paul Jacobs, *Prelude to Riot: a View of Urban America from the Bottom*. (New York: Random House, 1967).

[38] 392 US 40 (1968).

enforcement's desires.

CHAPTER TWO

MAPP v. OHIO (1957-1961): INTERSECTIONAL STRUGGLES for JUSTICE

Under the leadership of the Chief Justice Earl Warren, the United States Supreme Court set out to further procedural guarantees for criminal defendants that matched its strong civil rights record. The Warren Court (1953-1969) was both lauded and criticized for having the most liberal doctrines of the Court's history, and for using its judicial powers in dramatic fashion to decide several sweeping cases that expanded civil rights, civil liberties, judicial power and federal power. Chief Justice Warren particularly felt it necessary to create a rule to curb police violations of minorities' Fourth Amendment rights. With the exception of a few federal cases, a proactive and modern use of the Fourth Amendment did not begin until 1961 when the U.S. Supreme Court decided *Mapp v. Ohio*.[1]

This chapter explores the historical interpretations of *Mapp v. Ohio*, considering also feminist theory and the intersections of race, class, and gender as modes of oppression to expand the defendant's narrative. *Mapp v. Ohio* opened the door for the nation's highest court to address the meaning and scope of the Fourth Amendment.[2] The Fourth Amendment brought the notion of search and seizure into constitutional purview with broad language that captured the context of contemporary revolutionary debates on searches and seizures and the people's experiences in both the colonies and Great Britain.

Government abuse of privacy was prohibited by the Fourth Amendment. The text explicitly states reads:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures, shall not be violated, and no warrants

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[1] 367 U.S. 643 (1961).

[2] When the founding fathers drafted the original U.S. Constitution it did not contain the Bill of Rights. However, the First Congress proposed ten Amendments that were adopted as law on December 15, 1791.

> shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

It was the framers' intention to protect "the sanctity of a man's home and the privacies of life" and assuage the colonies' fear of the state's power to force individuals to become witnesses against themselves. Constitutional scholar David Hirschel contends that the founding fathers were "mindful of the abuses English citizens had [suffered] at the hands of their government, . . . [and therefore,] sought to bestow upon private individuals on American soil a guarantee against unreasonable governmental intrusion into their lives."[3]

Yet, for more than a century, neither the Supreme Court nor local courts invoked the Fourth Amendment's search and seizure clause to protect private citizens against state intrusions of individual privacy. The fifty-four words of the Fourth Amendment were the source of its own impediment because it contained no sanction for violations of its terms or remedy for an injured citizen. This oversight created a two-fold problem for courts. First, how would courts enforce the public's fundamental right to be secure at home and free from "unreasonable searches and seizures"; then, second, how would judges systematically address situations when the government violated that right. Courts would continuously wrestle with this oversight until the right opportunity presented itself. Dollree Mapp would become a catalyst for prompting major change within the American criminal justice system.

It was unlikely that Dollree Mapp, who was only twenty-nine-years-old at the time,

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[3] J. David Hirschel, *Fourth Amendment Rights*, (Lexington Books, 1979), 1. Importantly, Hirschel's book addresses how the police, defense counselors and prosecution officials view the exclusionary rule. Throughout this interdisciplinary study, he creates a true Brandies brief—a documentation of an argument with factual data obtained through research—for modifying the exclusionary rule. And although a Brandies brief is widely accepted among lawyers, few scholars have the necessary training in research methods to carry it off. Hirschel is credited for achieving the Brandies brief because his work successfully blends disciplines, research design and implementation methodology. I, however, contend that his work would benefit from an intersectionality approach. Unfortunately, his acclaimed analysis of Fourth Amendment rights ignores considerations of race, history, social science, and critical race theory.

would inspire sympathy or outrage from the public for state violations of her constitutional rights. As a woman of color, she inhabited a world in which inequalities of gender, race and social class were magnified. As a high school dropout, she struggled financially to maintain her independence and suffered the stigmatizing effects as a single parent, living within the ideological and moral confines of Black respectability. Mapp appeared deviant from the norm—an intact family—organized around a middle-class heterosexual couple. Mapp also lived precariously on the edges of the law. Local police routinely targeted her for suspicion based solely on her public associations with individuals whom the police believed were criminals. She would ultimately gain notoriety because of an illegal police search. Following that initial encounter, police arrested Mapp, and the state prosecuted her repeatedly for that single arrest, each time applying more punitive criminal laws, until ultimately Mapp faced a protracted incarceration. Due to police practices at the time and the nature of search and seizure law, the state's prosecution kept her trapped in a criminal justice limbo for years. But she took a stand, fighting relentlessly, until her case reached the U.S. Supreme Court.

The nation's highest tribunal focused on the Fourth Amendment's ban on "unreasonable searches and seizures" and the question of whether law enforcement officers could invade a home without legal authority and then build a criminal case from the evidence illegally acquired. The Court's decision in *Mapp* offered the nation a definitive answer for what courts *must* do to any "evidence secured by official lawlessness."[4] Six of the nine Supreme Court justices decided to use *Mapp* as a springboard for change, creating an "exclusionary rule" for evidence illegally seized by officers who conducted searches without a warrant or "probable cause." "Probable cause" exists when a law enforcement officer thinks a particular person has committed or will

[4] Mapp v. Ohio, 367 U.S. 643, 654-655 (1961).

commit a crime and it is more than a "mere suspicion." A search based on mere suspicion of a crime is unconstitutional and a subsequent seizure of property is illegal. For the first time in the nation's history, all police were required to have a warrant or probable cause to conduct searches of homes, individuals and personal property. Through judicial activism, the Court engineered an expansion of civil liberties for criminal defendants. The justices intended the new exclusionary rule to deter police from searching people merely on a "hunch or suspicion."[5] This is how Mapp became an unlikely pioneer for broadening individual rights, curtailing police powers, and upsetting long-standing police policies. Her narrative resonates most with people who experience invasive and unreasonable police searches, misconduct, brutality and racism. And Mapp's experience and narrative call to a collective memory recognizable to a Black body that has been systematically violated. Black women, who shortly after the landmark case burgeoned a feminist movement, considered Mapp a feminist hero.[6] Nevertheless, she is not remembered as a heroine for civil rights.

Scholar Patricia Hill Collins' monumental text, *Black Feminist Thought*, does not mention Mapp.[7] Perhaps because Collins asks if "one person [can] speak for such a large and

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[5] Actually, the 'judicial activism' was part of a broader context. Activists in the northern civil rights movement had been calling for an exclusionary rule since the 1940s. For an extended discussion of this see Martha Biondi, *To Stand Up and Fight: The Struggle for Civil Rights in Postwar New York City*. (Cambridge: Harvard University Press 2003); "Urge Support for Illegal Seizure Bill: Stuyvesant Residents Urged to Support Bill Prohibiting Law," *New York Amsterdam News*, March 5, 1949, B1 17.

[6] *Heresies Magazine,* a widely circulated feminist journal published from 1977 to 1992, released a special issue titled, *On Women & Violence*, featuring a poem written by Dollree Mapp who was incarcerated at Bedford Hills Correctional Facility. The collective issue also included other popular feminists, artists and activists dedicated to dialogue and feminist critique of the intersections between art, politics, state violence, oppression and prisons. See Dollree Mapp "Pooah, Pooah Woman," *Heresies Magazine Issue #6: On Women and Violence* 2, no. 2: 115 http://heresiesfilmproject.org/wp-content/uploads/2011/10/heresies6.pdf; The Defense Committee to Free Dollree Mapp established various fundraising efforts care of "Women Free Women in Prison" and published Dollree Mapp's poem, "No Way Out" as well as an article by entitled, "Mapp Loses Appeal." *Off Our Backs: A Woman's News Journal* 9, no. 2 (February 1979), 7.

[7] Patricia Hill Collins. *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment.* (Boston: Unwin Hyman, 1990).

complex group?"[8] In this chapter, I contend that Mapp took on this challenge and stood out as one voice in a dialogue among people who had been systematically violated under Jim Crow, punitive laws and the criminal justice system. Her case does not focus on race, but it shows how doctrinal developments in law over time affected the balance of social interests. Nevertheless, Alan Freeman notes all legal doctrine "must be understood as part of an ideological narrative about how race is understood, a narrative that can legitimate racial power by representing it as neutral and objective."[9] In this light, Mapp's race mattered in her struggles within the justice system. While the Supreme Court does not mention race in its final decision, *Mapp*'s narratives would become important to scholars of Critical Race Theory (CRT) who focus on race, civil rights and liberties in the 1960s and beyond. In the aftermath of *Mapp*'s case, Scholar Kimberlé Crenshaw's work, "*Race, Reform and Retrenchment: Transformation and Legitimization in Antidiscrimination Law*," provides a framework for explaining how the legal profession legitimates racial inequality.[10] Crenshaw theorizes that society has not seen the demise of the "explicit ideology of white supremacy" because the white norm continues through "positive social norm" laws.[11] This chapter tests Crenshaw's critique of the law's proclivity for permitting and codifying laws and practices that perpetuate race-based policing.

Dollree Mapp: Defying Jim Crow Segregation and Inequality

At the center of the landmark case stood a biracial woman, Dollree Mapp, the daughter of a Black mother and Cherokee Indian father. Born in 1924 on Halloween day in Austin, Texas Mapp stood out among her six siblings as an "assertive . . . and determined child" because of her

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[8] Collins, *Black Feminist Thought*, x.
[9] Alan D. Freeman, "Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine," *Minnesota Law Review* 62, (1977-1978): 1049.
[10] Kimberlé Crenshaw, "Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law," *Harvard Law Review* 101, no. 7 (1988).
[11] Crenshaw, "Race, Reform and Retrenchment," 115.

strong-will.[12] At age ten, while most of the Black girls were expected to work as domestics in private White households, Mapp went to live with an aunt to attend school. She joined the Great Migration in which millions of Black southerners moved north, particularly to Cleveland, Ohio, to escape exploitation, low-paying jobs, and racial violence, but also to seek a more equitable lifestyle.[13] Mapp's formal education ended at fifteen when she gave birth to a daughter, her only child. Later, Mapp continued her studies, taking evening classes in art and fashion design. Enjoying a rich social life, she spent her leisure at popular nightclubs and became familiar with Cleveland's boxing scene. There she met and ultimately married Jimmy Bivins, one of the best light-heavyweight boxer of his time.[14] The glamorous couple's photographs appeared in publications across the country. Despite the high-profile life, Bivins was abusive to his wife and Mapp divorced him, becoming a single parent of a teenage daughter.[15] Defying negative odds, she moved on with her life.

Mapp moved into an ultramodern two-story brick house in Shaker Heights, an affluent white neighborhood, located in the eastern suburbs of Cleveland, Ohio.[16] At this time, Black people had become 30 percent of the Cleveland's inner city population and they rarely obtained housing outside of the city limits.[17] Jim Crow caused mass migration from the South increasing Cleveland's Black population from 85,000 in 1941, to over a quarter million in 1960.[18] Jim

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[12] Carolyn N. Long, *Mapp v. Ohio: Guarding Against Unreasonable Search and Seizures* (Lawrence: University of Press of Kansas, 2006), 2.
[13] Kimberley L. Phillips, *The Working Class in American History Series* (Urbana: University of Illinois Press 1999).
[14] Long, *Mapp v. Ohio*, 2. From 1940 to 1953, Bivins defeated eight world champion boxers and ranked as the number one contender in both light-heavyweight and the heavyweight division in 1942.
[15] Mapp had been engaged to light-heavyweight boxing champion Archie Moore, but that ended in a lawsuit when Moore simultaneously attempted to marry a New York model.
[16] "'Surprise Witness' Scared, Balks During Trial of Birns," *Cleveland Press*, November 1, 1957, http://images.ulib.csuohio.edu/cdm/compoundobject/collection/law/id/2638/rec/20
[17] "'Surprise Witness' Scared, Balks During Trial of Birns," *Cleveland Press*, November 1, 1957.
[18] Kenneth L. Kusmer, "African Americans," *The Encyclopedia of Cleveland History*, http://ech.case.edu/cgi/article.pl?id=AA.

Crow was a system of state and local laws as well as social practices that constituted a pervasive and deep-rooted racial caste system in the South. Jim Crow discrimination had also penetrated various aspects of public and private life in major cities of the North, Midwest and West.[19]

Cleveland's Jim Crow laws institutionalized private racist attitudes and segregated Black and white people in public schools, churches, parks, theaters and neighborhoods.[20] While the Supreme Court's landmark decision in *Brown v. Board of Education* (1954) ended racial segregation in public schools, Jim Crow continued in several aspects of public life. Due to discriminatory housing policies and other *de facto* segregation practices, most Black people were unable to find affordable and quality housing. Gradually, Cleveland's poor Black communities expanded to the east and northeast where white people lived. Black people began to move into white neighborhoods but this did not lead to integration or better housing. Landlords typically subdivided structures into small apartments and raised rents exorbitantly. The result was new crowded ghettos of deteriorating housing stock. The racial change also precipitated white flight. Greedy realtors played a central role in further shifting the racial demographics of Cleveland's inner city by using "blockbusting" techniques to induce white homeowners to fear Black migration. White citizens sold their property at a loss and moved to the suburbs because they were fearful that racial integration would cause property values to decline. Amid this racist

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[19] The historic Supreme Court decision in Plessy v. Ferguson 163 U.S. 537 (1896) upheld the constitutionality of racial segregation and further legitimized it by the "separate but equal" doctrine, which perpetuated the legacy of slavery and Black subjection; it further offered justification for Jim Crow in housing, education, employment and all public accommodations. By 1903, in the wake of the Plessy decision, people suffered according to strict color lines so much that social justice activist, W. E. B. Du Bois wrote, "the problem of the Twentieth Century is the problem of the color-line." See W.E.B. Du Bois and Norman Harris, *The Souls of Black Folk.* (New York: Pocket Books, 2005), 3.

[20] Kenneth L. Kusmer, *A Ghetto Takes Shape, Black Cleveland, 1870-1930.* (Urbana: University of Illinois Press, 1976); Russell Davis, *Black Americans in Cleveland from George Peake to Carl B. Stokes.* (Washington: Associated Publishers, 1972); Kimberley L. Phillips, "'But it is a Fine Place to Make Money': Migration and African-American Families in Cleveland, 1915-1929," *Journal of Social History* 30, no. 2 (December 1996): 393-413; Kusmer, "African Americans," *Encyclopedia of Cleveland History*, http://ech.case.edu/cgi/article.pl?id=AA.

social climate, Mapp owned a two-family house, subdivided with up and downstairs rooms and apartments. She rented out the first floor and rooms to boarders. By renting to other Black people, Mapp further integrated her neighborhood, causing Shaker Heights' white residents, as well as the local police, to take an ugly interest.

Home Invasion: Illegal Police Search and Seizure

For the first time, Mapp experienced the full extent of the state's search and seizure power from the Cleveland Police Department's Bureau of Special Investigation (BSI). Early in the afternoon, on May 23, 1957, three white officers arrived at Mapp's home demanding to "come in and take a look" after having received an "anonymous tip" earlier that day, alleging that a bomb suspect was in her house.[21] The officers had no warrant. Mapp immediately called her attorneys, A.L Kearns and Walter Green, for advice.[22] At the time, Ohio's constitution, as in twenty-five other states, required officers to obtain a search warrant based on "probable cause," supported by an oath or affirmation that described with particularity the place to be searched and items to be seized. Based on her lawyer's advice, Mapp refused to admit the police without a warrant.

Sergeant Carl Delau, who was the head officer on the scene, considered Mapp's lack of consent as "cunning, daring and audacious."[23] At this point, Delau who had conducted hundreds of searches without warrants, had little reason to believe that Ohio courts would reject his enforcement practices, or refuse to admit evidence that local police illegally seized.[24] Delau

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[21] State v. Mapp (No. 68326) "Defendant's Bill of Exceptions," (Transcript of Mapp's Criminal Trial in Court of Common Pleas of Cuyahoga County) September 3, 1958, 4, 10 Cleveland-Marshall College of Law Library, http://images.ulib.csuohio.edu/cdm/ref/collection/law/id/3121.

[22] Mapp was unable to reach her attorney of record, A. L. Kearns, but she spoke with Walter L. Greene, a young attorney who had recently joined Kearns' firm. Based on his reading of Ohio's state constitution, Greene apprised Mapp of her rights to be secure in her home free from a search without a warrant.

[23] Long, *Mapp v. Ohio*, 7.

[24] Long, 7.

became frustrated by Mapp's demand for a warrant and left with intentions to return with the Vice Unit.

Sergeant Delau was born in August 1918 in Cleveland to German immigrant parents. He was the fifth of eight children. Standing six foot three and 180 pounds, Delau had an imposing stature.[25] He joined the Cleveland police department at age 27 on January 1, 1946. "There I was, out after five years of service in World War II," Delau once told reporters, "and I wanted action."[26] Delau was reportedly good at his job and devoted, remaining a bachelor throughout his career.[27] After only three years, the force appointed Delau to Cleveland Police Department's Bureau of Special Investigation (BSI) which was created to investigate vices throughout the city.[28] Its criminology connected illegal gambling to organized crime and violence across Cleveland. Consequently, BSI developed a strategy to target a daily illegal lottery system known as "numbers running" or "policy" games, which offered gamblers chances to win at a rate between 200 to one and 1,000 to one.

Bettors hailed from every racial and ethnic background, but they typically belonged to the lower classes. In Cleveland police reportedly singled out African Americans for vice investigations, leading to racial tension between Black residents and BSI. According to Delau's later interview with political scientist Long, BSI was successful at controlling vice, "putting a severe crimp in the illegal horse wagering."[29] Delau added that sometimes BSI investigated

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[25] One of the contributing writers for the *Cleveland Plain Dealer*, describes Delau as "handsome and six foot three." May 20, 1959. Cleveland State University, Michael Schwartz Library, Special Collections.
[26] "Lt. Delau Chose Police For Action," *Cleveland Plain Dealer,* January 26, 1966. Cleveland State University, Michael Schwartz Library, Special Collections.
[27] Hilbert Black, "Delau First Booked Birns in '48, and Has Trailed Him Ever Since," *Cleveland Press,* July 12, 1963. Cleveland State University, Michael Schwartz Library, Special Collections.
[28] Delau continued to rise in rank, first, becoming a Lieutenant and then, by the late 1960s, he began to lead Special Investigations as Captain.
[29] Long, *Mapp v. Ohio*, 9-10.

officers who took payoffs from the numbers racket.[30] A prominent African American businessman, Winston Willis, however, held an opposing view. Willis initiated a federal lawsuit against the city of Cleveland and BSI accusing Carl Sergeant Delau, specifically, of a string of civil rights violations. Willis aimed "to cure one of the biggest maladies in this town, Carl Delau . . . the worst policeman on the force. He and his anti-Black unit of cops harass Black people for minor gambling and liquor infractions while cheat spots run wide open in the white West Side."[31] Historian Kenneth Kusmer corroborated these claims and more, revealing that for decades Cleveland's city officials typically supported ineffective policing in Black communities.[32] This race-based criminal justice policy worked to the benefit of white leaders and residents by making it less likely that gambling rings and "red-light districts might spring up in white areas."[33] But in Delau's view, aggressively following leads on gambling and violence was proper policing and it was what led BSI and Delau to Mapp's residence.

Several hours after the initial encounter, Delau returned to Mapp's house with a backup team of BSI officers at approximately 4:30 in the afternoon on May 23rd. The arrivals included a police lieutenant, an inspector, two additional patrolmen, and an armada of police vehicles.[34] Mapp was unaware she was under such heavy surveillance. Mapp's attorney, Walter Green, who witnessed the encounter, later described it as "something out of the movies or TV . . . .There were . . . flashing lights and cops all around. Neighbors from all up and down the street had

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[30] Long, 9-10.
[31] Jim Marino, "Euclid-E. 105th Owner, Policeman to Meet in Court," *Cleveland Press* February 2, 1978. Cleveland State University, Michael Schwartz Library, Special Collections.
[32] Kusmer, *A Ghetto Takes Shape*, 50.
[33] Khalil G. Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge: First Harvard University Press, 2010), 226.
[34] The police arrived with two radio cruisers as well as a Black Maria, a patrol wagon for transporting prisoners.

gathered on the sidewalk across from Dolly Mapp's house. . . ."[35] The police broke through a side door which lead up to Mapp's apartment and a team of officers flooded her home. One officer waved a piece of paper that he claimed was a search warrant.[36] Mapp grabbed the paper and shoved it down the front of her dress.[37] Delau, along with other officers had surrounded Mapp. He declared, "I'm going down after it." Struggling against their invasion, Mapp screamed and protested, "Take your hands out my dress!"[38] After retrieving the alleged warrant, Delau ordered the police to handcuff Mapp. Now both confined and surrounded by an army of officers, Mapp was certain that the police presence in her home was not to serve and protect her or about an alleged suspect.

Mapp always maintained that the police search for a bomb suspect was a pretext to conduct a search of her private life. She later told political scientist Carole Long that the police "searched the drawers, the kitchen cabinets, the closets, [and] in the pills—I had some diet pills. I guess they were looking there for some man in the pill package. They went all over."[39] The local press reported that some officers had gone downstairs into another tenant's apartment where they found a Black man, who they promptly arrested as the alleged suspect.[40] After police found the alleged suspect, they had no reasonable grounds to continue searching. But the search did not end. For three hours, the police detained Mapp without arresting her. She felt degraded and humiliated as officers searched her daughter's room, undergarments and other personal items. Eventually, the police found something to incriminate Mapp. In the basement, an officer

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[35] Defendant's Bill of Exceptions, 30-31.
[36] Defendant's Bill of Exceptions, 5
[37] Defendant's Bill of Exceptions, 18.
[38] Defendant's Bill of Exceptions, 18, 32, 46.
[39] Long, 15.
[40] The Black man that police arrested was Virgil Ogeltree. The state later dismissed all charges against Ogeltree. "Landmark Decision," *Cleveland Press,* June 21, 1961. Cleveland State University, Michael Schwartz Library, Special Collections.

discovered a trunk with gambling papers, a hand-drawn picture "of a very obscene nature" as well as four "dirty" books.[41] Mapp denied owning the items and explained that they belonged to a former roomer in her boarding house. Nevertheless, the police arrested Mapp and charged her with a misdemeanor for the possession of the gambling paraphernalia, which carried a penalty of up to one year in prison.

Arrest: Police Interrogation and Press Presumption

Sergeant Delau, who believed Mapp knew more about vice in general, the bombing, and local violence around Cleveland than she was willing to divulge, took her back to the precinct. Determined to break her "gruff façade," Delau allegedly used extreme and rough police tactics to question Mapp for several hours.[42] And though she vehemently denied being involved in the bombing or other crimes, Deleau found her "very evasive in her answers."[43] He questioned her more aggressively and held her overnight, believing a night in a jail would soften Mapp's resolve.

The next day, Cleveland's newspaper ran the front-page story, "*California Gold Policy House Abruptly Went Out of Business Yesterday After a Three-Hour Police Siege of the Home of Miss Dollree Mapp*." Alongside the headline was a photograph of Delau, standing in front of Mapp's house with the trunk of evidence.[44] The police's actions and media portrayal criminalized Mapp in the public's eye, and denied her the presumption of innocence until proven guilty well before she reached the courthouse.

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[41] The U.S. Supreme Court justices asked to see the evidence, which were four novels, *Affairs of a Troubadour, Little Darlings, London Stage Affairs,* and *Memories of a Hotel Man***.** See "Appellee's Motion to Dismiss or Affirm," 4-5, http://images.ulib.csuohio.edu/cdm/ref/collection/law/id/2991.

[42] J. Michael Martinez, *The Greatest Criminal Cases: Changing the Course of American Law* (Praeger, 2014), 81-82.

[43] Martinez, *The Greatest Criminal Cases,* 81-82.

[44] Jerry Ballinger, "Policy House Closed After 3-Hour Siege: Police Break In, Arrest Former Mrs. Bivens," *Plain Dealer,* May 24, 1957, 1, 11. Cleveland State University, Michael Schwartz Library, Special Collections.

Criminal Court System: Local Backlog, Punitive Laws and Persecution

On May 24, 1957, Mapp entered the criminal court system prepared to fight for her freedom and protect her liberties and dignity. But the backlogged Cleveland Municipal Court (which handled traffic violations and misdemeanors) heard Mapp's felony case. Studies of the criminal court system at that time found that defendants suffered from heavy "caseload pressure," a pervasive dysfunction that accounted for unnecessary dismissals, pervasive plea-bargaining as well as convictions of innocent defendants.[45] According to law professor Samuel Dash, caseload pressures were responsible for discouraging trials, and inducing several innocent defendants to plead guilty.[46] In addition, the Cleveland Crime Survey—the first systematic, empirical examination of American criminal justice—observed that often times, prosecutors could not perform their duties because they were immensely overworked. The Survey specifically concluded that heavy caseloads in the Municipal Court of Cleveland had indeed resulted in unnecessary dismissals of many cases and occasional convictions of innocent defendants.[47] Three decades after the Survey, caseload pressures continued to plague the system.[48] Thus, Mapp stood at a precarious juncture: she could wait the system out and hope for a dismissal, enter a guilty plea and seek lenient punishment, or proceed to a trial and risk being convicted. At the time, criminal defendants were not provided with free legal counsel. Undeterred by the adversarial system, Mapp maintained her innocence and hired an esteemed

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[45] Alfred Bettman attributed the high guilty rates discussed in the Wickersham Commission report to the "immense volume of cases thrown upon prosecutors." Alfred Bettman, Criminal Justice Surveys Analysis, in 4 U.S. National Commission on Law Observance and Enforcement, Report on Prosecution 96 (1931)

[46] Samuel Dash, "Cracks in the Foundation of Criminal Justice," *Illinois Law Review* 46, no. 400 (1951).

[47] Reginald H. Smith, "Cleveland Crime Survey," *Criminal Justice In Cleveland* 54, (1921).

[48] Peter F. Nardulli, "The Caseload Controversy and the Study of Criminal Courts," *Journal of Criminal Law & Criminology* 70, no. 1 (1979) citing Donald Newman and Albert Alschuler who contended that plea bargaining evolved to cope with rising caseloads, and as court cases increased so did concessions in sentences increase. See Donald Newman, "Pleading Guilty for Consideration: A Study of Bargain Justice," *Journal of Criminal Law, Criminology, and Police Science* 46, no. 780 (1956); Albert Alschuler, "The Prosecutor's Role in Plea Bargaining," *University of Chicago Law Review* 36, no. 50 (1968).

criminal defense lawyer, A.L. Kearns.[49] He successfully persuaded the judge to rule in her favor. The court set Mapp free, acquitting her of the gambling charges. However, this dismissal did not end Mapp's struggles with police.

The police found obscure legal grounds to re-arrest Mapp, ensnaring her for the second time within the criminal justice complex. Police filed an affidavit charging her with violating Ohio's anti-obscenity law which made simple possession of obscene materials a felony. If convicted, Mapp faced several years in prison.[50] The prosecutor went forward with the charges and Mapp appeared in Municipal Court for yet another arraignment. There, the state presented new felony charges against her despite the fact felonies were beyond that court's jurisdiction. Armed by local law and using department policy as a shield, the police could not have expected the determination with which Mapp was again prepared to fight in court.

Mapp exemplified, and perhaps drew strength from, what Du Bois once described as a notion of "double-consciousness." This was a "sense of always looking at oneself through the eyes of others," constantly being measured by "amused contempt or pity." Mapp bore the weight of her twoness—as an American and a Negro with—"two unreconciled strivings; two warring ideals in one dark body . . . whose dogged strength alone keeps it from being torn asunder."[51] Mapp understood this doubled-self and was used to being mistreated in a city where there was racial tension. "I was a [B]lack woman living on [my] own in a white neighborhood. . . . They [police and white people] thought they controlled the town," she recalled. But as an American, she was also entitled to certain fundamental rights guaranteed by the U.S. Constitution, and she defended her Americanness in court by challenging the police and state to prove her guilty

[49] An acquaintance, who wished to remain anonymous, financed Mapp's legal expenses.
[50] Defendant's Bill of Exceptions, 10.
[51] W. E. B. Du Bois and Norman Harris, *The Souls of Black Folk* (New York: Pocket Books, 2005), 7.

beyond a reasonable doubt.

Standing before the Municipal court, Mapp refused a guilty plea.[52] She understood her freedom was subject to the Judge Andrew Kovachy's discretion. He held exclusive right to determine Mapp's eligibility for bail. Criminal procedure law required the judge to weigh Mapp's flight risk against her connection to the community, as was typical of the time. But untimely delays in the criminal court system threatened accused persons, who could not afford to pay bail, of lingering longer time in jail. As for Mapp, Judge Kovachy imposed a bail of $2,500 over a $5,000 bond, then sent her case to the grand jury for further consideration.[53] However, Cuyahoga County's grand jury was not scheduled to convene until September 1957, which was not for another several months.

Ohio criminal procedure law required a grand jury to hold a secret preliminary hearing to indict an accused, but the law did not guarantee that this process would be quick. At the time, criminal defendants around the nation suffered from systemic court lags. In an exhaustive study published in the late 1950s, Professor H. Zeisel observed:

> Delay in the courts …. deprives citizens of a basic public service, … the lapse of time frequently causes deterioration of evidence and makes it less likely that justice be done when the case is finally tried; [and] it is bad because delay may cause severe hardship to some parties. . . .[54]

For Mapp the first delay amounted to four months, but she did not have to remain in jail pending the grand jury determination because an anonymous sponsor posted bail, allowing for her immediate release. When the grand jury finally met, it decided there was more than enough

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[52] Initially, Mapp agreed to plea guilty for possession of obscene literature but only under the condition that the state prosecutor would recommend a fine as her sentence. However, Common Plea Judge Joseph A. Artl refused the plea deal. See "Faces Trial on Smut Charge," *Cleveland Press*, August 1, 1958, via Cleveland Memory Project, http://images.ulib.csuohio.edu/cdm/compoundobject/collection/law/id/2646/rec/13.

[53] "Woman Charged on Obscene Photos," *Cleveland Press*, June 25, 1957. Cleveland Memory Project, http://images.ulib.csuohio.edu/cdm/compoundobject/collection/law/id/2636.

[54] Hans Zeisel, Harry Kalven and Bernard Buchholz, *Delay in the Court* (Boston: Little, Brown & Co. 1959), XXIII.

evidence to charge Mapp with the felony crime. Next, the system had to set her trial date, and the crucial question became would Mapp receive a speedy trial?[55] It took almost one year to schedule a jury trial in the Court of Common Pleas.[56]

Fifteen months after police invaded Mapp's home and arrested her twice, her jury trial began on September 3, 1958 with Judge Donald F. Lybarger presiding. A talented trial attorney, A. L. Kearns once again defended Mapp. He built a defense around complicated search and seizure laws that were marred by juridical and legislative contradictions. He argued that the police violated Mapp's Fourth Amendment right to be free of "unreasonable search and seizure" because they acted without a warrant; he also made two ancillary, yet important, claims that Cleveland police violated Mapp's First Amendment right to an "expectation of privacy" in her home and on her own person, and that by admitting the illegally seized evidence against her at trial the court violated Mapp's Fifth Amendment right to be free from self-incrimination.

Kearns' legal strategy was unusual for the time, especially given the juridical precedent with which he had to work. Historically, defendants rarely asserted claims under the Bill of Rights in local criminal courts, and it was uncommon to allege a Fourth Amendment guarantee. When Congress first passed the Fourth Amendment there were few criminal laws on the books for federal law enforcement agents to enforce leaving federal courts with limited opportunities to cite the provision—or address its violation. As such, it appeared as if federal courts had never considered "unreasonable search and seizure" under the Fourth Amendment to be a major

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[55] At the time of Mapp's criminal case, the U.S. Constitution guaranteed criminal defendants the Sixth Amendment right to a speedy trial, but seldom did accused persons enjoy that right in state prosecutions. The Supreme Court would not apply the protections of this Amendment to the states until the 1970s. See Barker v. Wingo, 407 U.S. 514 (1972) where the Court established its four-part case-by-case balancing test for determining whether the defendant's right to speedy trial had been violated under the Due Process Clause of the Fourteenth Amendment.

[56] See Oral Argument of A. L. Kearns, Mapp v. Ohio, U.S. Supreme Court Oral Argument Recording, March 29, 1961. U.S. Supreme Court Media, Chicago-Kent College of Law. Audio available at Oyez Project at: http://www.oyez.org/.

concern.[57]

Fourth Amendment Precedents: Supreme Court Applications

After remaining dormant for 110 years, the Supreme Court eventually invoked the Fourth Amendment in a New York case, *Boyd v. United States* (1886).[58] In *Boyd,* the Court ruled that illegally seized evidence was inadmissible in federal courts under the Fourth Amendment, setting precedent that lasted for over a century.[59] However, the decision left lower courts with several questions concerning application—or incorporation—of the Amendment to state courts.

The application issue posed a major problem for Kearns in the Ohio court. To make Mapp's constitutional claim successful, Kearns needed to cite legal precedent to persuade the state court to dismiss the illegally seized evidence. Kearns was bound by the few Supreme Court decisions that addressed the Fourth Amendment, some of which was unfavorable to Mapp. Mapp's greatest chance for success depended on Kearns' ability to show that precedent should apply by citing favorable case law and alleging that facts from the existing cases were sufficiently similar to the facts in Mapp's case.

There was one Supreme Court case somewhat favorable for Mapp's claim but it had originated in New York and was decided at the turn of the twentieth century. *Adams v. New York* (1904) was the Court's second major search and seizure case and provided the justices with

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[57] Erwin N. Griswold, *Search and Seizure: A Dilemma of the Supreme Court* (Lincoln: University of Nebraska Press, 1975), 2.

[58] Boyd v. United States, 116 U.S. 616, 634-35 (1886). The Court held that "a search and seizure [was] equivalent [to] a compulsory production of a man's private papers" and that the search was "an 'unreasonable search and seizure' within the meaning of the Fourth Amendment." Boyd was a civil case.

[59] Actually, in 1878, the Court first enforced the Fourth Amendment to cover sealed mail and prohibit federal agents from examining mail without a warrant. However, the Court's decision did not directly cite the Fourth Amendment's protection against illegal search and seizure as the legal basis for that outcome. Instead it cited the Amendment by way of dictum. See Ex parte Jackson, 96 U.S. 727 (1878); See "Federal Judicial History," Federal Judicial Center. http://www.fjc.gov/history/home.nsf/page/tu_olmstead_questions.html (last seen June 19, 2013); Griswold, *Search and Seizure*, 2.

an opportunity to clarify its Fourth Amendment doctrine.[60] The evidence seized in *Adams* was similar to what police seized in Mapp's case, but the circumstances that led the police to conduct a search differed. In *Adams*, a federal officer searched Albert J. Adams' home with a warrant and discovered illegal gambling documents. The Court found that with a valid warrant the evidence was admissible, but it had not addressed what to do when state governments violated the Fourth Amendment. Kearns had alleged all along that the Ohio police lacked a legitimate search warrant in Mapp's case, but he needed legal precedent to convince the judge that without a warrant the Court had authority to exclude the illegally seized evidence from trial. Kearns found favorable legal precedent existed.

As early as 1914, the Supreme Court moved closer towards making the Fourth Amendment effective in the case *Weeks v. United States* (1914), and it articulated a new doctrine, the exclusionary rule, directing courts to excluded evidence that resulted from illegal searches of citizens and their property.[61] In *Weeks*, a combination of unusual facts and occurrences inspired the Court's decision.

Law enforcement agents had entered Fremont Weeks' home on two separate occasions to search for personal papers. During the first entry, local police did not have a warrant, but they seized papers linking Weeks to an interstate lottery scheme. The police notified federal authorities that Weeks had also committed a federal crime by using the mail service to conduct an illegal lottery—or game of chance—across state lines. The federal marshal believed he might find more evidence at Weeks' home so entered the premises without a warrant and seized additional papers. In federal district court, Weeks' counsel moved for the return of all the items. The district court refused to order the return of anything that would be used as evidence at the

[60] Adams v. New York, 192 U.S. 585 (1904).
[61] Weeks v. United States, 232 U.S. 383, 396, 398 (1914).

trial, and further reasoned that the question of how evidence was obtained was not material. Thus the evidence was introduced at the trial and a jury convicted Weeks. He appealed to the Supreme Court on constitutional grounds alleging that the lower court erred by refusing to exclude the evidence received in violation of his Fourth Amendment rights.

Justice William Rufus Day authored the unanimous decision of the Supreme Court, which reversed Weeks' conviction. The Court held that the Fourth Amendment protection declaring a person's "right to be secure against such searches and seizures, is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution."[62] In addition, the Court provided law enforcement with guidelines for proper conduct instructing that the federal marshal could have searched Weeks' house only "when armed with a warrant issued as required by the Constitution, upon sworn information and describing with reasonable particularity the thing for which the search was to be made." Accordingly, the materials having been "taken from the house of the accused by an official of the U.S, acting under the color of his office" was a direct violation of the Weeks' constitutional rights.[63] However, the Fourth Amendment prohibition was inapplicable to the papers taken by the local state police office because the prohibition had "its limitations" that only reached as far as the federal government and its agencies.[64]

Exclusionary Rule: Between Weeks and Wolf

While *Weeks* was effective in deterring unreasonable and warrantless searches in federal prosecutions, at the time it was not applicable to the states. For almost four decades, the view prevailed that local law enforcement could conduct warrantless searches of citizens and local

[62] Weeks, 393.
[63] Weeks, 398.
[64] Weeks, 398.

courts did not have to exclude the resulting evidence. Then in 1949, the Court revisited the *Weeks* doctrine in the case of *Wolf v. Colorado* (1949).[65] A deputy sheriff seized Dr. Julius A. Wolf's appointment book without a warrant and interrogated the people whose names appeared in the book, after which time, a jury convicted Dr. Wolf of conspiring to conduct illegal abortions. On appeal, the Supreme Court issued an opinion that illegally obtained evidence could be used in state courts without violating the constitution. Justice Felix Frankfurter further opined that a state could choose to follow the exclusionary rule, as promulgated in the *Weeks* decision, at their discretion. At the time, thirty-one states had rejected the exclusionary rule while seventeen states accepted it. Respecting state rights, the Court concluded it could not "condemn [the rejecting states] as falling below the minimum standards assured by the Due Process Clause" and, therefore, the Court conceded that it lacked power to enforce the right in a majority of the states.[66] Later, when Mapp's claim reached the U.S. Supreme Court, Justice Frankfurter was one of the deciding justices and Mapp would challenge his landmark opinion in *Wolf*.

By the 1950s, the Court introduced more narrowly-tailored grounds for applying the exclusionary rule in state criminal proceedings. The Court's search and seizure doctrinal view began to shift toward a conclusion that the Fourth Amendment was applicable to the states based on the holding in *Rochin v. California* (1952).[67] It was the *Rochin* decision that offered Mapp a potential defense and a promising chance of success because police conduct in *Mapp* was

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[65] Wolf v. Colorado, 338 U.S. 25 (1949).

[66] Wolf, 25. The federal Constitution expressly mentions due process only twice; first, in the Fifth Amendment, which tells the federal government that no one shall be "deprived of life, liberty or property without due process of law"; and second, in the Due Process Clause of Fourteenth Amendment, ratified in 1868, which establishes a legal obligation of all states at all levels of government to operate within the "legality" of law and provide citizens with fair procedures.

[67] Rochin v. California, 342 U.S. 165 (1952). The Court found the Fourth Amendment applicable to states through the first clause of the Fourteenth Amendment which states, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

arguably similar to that of *Rochin*.

Several California Sheriff's officers entered Richard Antonio Rochin's home without a warrant while Rochin was in bed and there were two capsules next to him on a nightstand. After an officer asked "whose stuff is this?," Rochin quickly shoved the pills into his mouth, swallowing them to get rid of the evidence.[68] Three officers jumped on him while one began choking Rochin's neck and sticking fingers down his throat to retrieve the pills.[69] Having no success, the police handcuffed Rochin and transported him to the hospital, where police ordered doctors to insert a tube down Rochin's throat to pump his stomach. This stomach pumping procedure produced two pills that contained morphine, which police seized.[70] In criminal court, the judge admitted the pills as evidence. Later after a state trial, the jury convicted Rochin of possessing illegal narcotics. He subsequently appealed the conviction before the U.S. Supreme Court. The Court concluded that the police had obtained the evidence by engaging in a course of conduct that "shocked the conscience" and, therefore, determined that the state should suffer certain consequences.[71] The Court further held that if law enforcement obtained evidence in a manner that "shocked the conscience," they would violate the Due Process clause of the Fourteenth Amendment and the evidence would no longer be admissible in state criminal proceedings.[72]

The application of the exclusionary rule as a sanction against Fourth Amendment violations remained in flux for most of the 1950s. Justice Frankfurter referred to this as the "silver platter" doctrine meaning that state officers could seize evidence illegally and then, if

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[68] Rochin, 166.
[69] Rochin, 166.
[70] Rochin, 166.
[71] Rochin, 172.
[72] Rochin, 172.

they had acted independently, hand it over to federal authorities "on a silver platter."[73] And in the reverse, federal authorities could also avail themselves to the "silver platter" doctrine to hand over illegally seized evidence to states. By 1956, however, the Court enjoined federal officers from delivering illegally seized evidence to state authorities and from testifying for local criminal prosecution.[74]

At the time of Mapp's criminal prosecution, the "silver platter" doctrine remained an option for states. The Ohio prosecutor could have turned the incriminating evidence over to federal authorities for prosecution.[75] But, Ohio law enforcement went to great lengths to charge Mapp under local laws, and since the Supreme Court had not yet imposed the exclusionary rule on the states in all cases, there was an incentive for the Ohio prosecutor to keep her case. A federal judge was more likely to enforce the Fourth Amendment and rule against the Ohio police search. As long as Ohio maintained jurisdiction, Mapp had to rely on local laws and few federal exceptions.

At Mapp's felony trial, her attorney Kearns exhausted several defenses and attempted to avail her to the narrow exceptions of when the exclusionary rule could apply to states, warranting dismissal of the evidence and an ultimate acquittal. Kearns relied on the exceptional federal precedent set in *Rochin*, which laid the groundwork for local courts to refuse to admit evidence after considering how police made those seizures and upon determining if such behavior "shocked the conscience." During Mapp's trial, Kearns elicited testimony from several witnesses in an attempt to show that Ohio's law enforcement, including Sargent Delau had behaved unreasonably during the search, and to convince the local court that the police's conduct

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[73] Lustig v. United States, 338 U.S. 74, 79 (1949).
[74] Rea v. United States, 350 U.S. 214 (1956).
[75] In 1960, a year prior to hearing Mapp's case, the Supreme Court completely overturned the silver platter doctrine. Elkins v. United States, 364 U.S. 206 (1960).

towards Mapp shocked the conscience.

On direct examination, Kearns asked Mapp to describe her encounter with the police who broke into her home. Mapp testified that she ". . . grabbed the search warrant off [an officer] and put it down in my bosom," explaining to the jury, she secured the alleged warrant there because she ". . . wanted to read it to make sure it was a search warrant."[76] Mapp had secured it the one place she had a reasonable expectation of privacy but police refused to respect her boundaries. Mapp went on to describe how one officer grabbed her while stating, "I'm going down after it." At which point, Mapp began to struggle, "I told him, 'No you are not!'" But over her objections, she recounted, "He went down anyway."

Mapp also elaborated on other types of physical abuse. She testified how, on one occasion, a lieutenant " . . . grabbed me,. . . twisted my hand . . . behind me, and it was hurting. I yelled, I pleaded with him to turn me loose." The officer who previously retrieved the fake warrant now handcuffed himself to Mapp instead of releasing her. He took her into the bedroom while several officers went free to search "upstairs and some downstairs."[77] Despite the facts and testimony, the Court did not consider the officer's reach down Mapp's shirt to be a lewd act or conduct that "shocked the conscience." Judge Lybarger ultimately denied Kearns' application to invoke the *Rochin* exception for Mapp's defense.

The sexual nature of the police recovery at Mapp's home in 1957 epitomized an extreme scene of subjection. In her book, *Scenes of Subjections,* Saidiya Hartman, explores how since slavery, post reconstruction and beyond, Black women have experienced a continuation of abuse and endured violent scenes of subjection within America. Mapp would recall the terror of the police search for the rest of her life. Several people stood by as witnesses to the police search

[76] Defendant's Bill of Exceptions, 46.
[77] Defendant's Bill of Exceptions, 46.

and seizure.

At her trial, one of Mapp's attorneys, Walter Green, also testified about his observations from that day. He told the jury that he went to the home because Mapp was "terrified and asked that [he] come out."[78] Green became a witness to the abuse even though the police prevented his entry. His testimony confirmed Mapp's claims. From outside the house, Green said, "I heard Mrs. Mapp *call out* several times" and at least once she screamed, "[t]ake your hands out my dress."[79] Mapp's scream echoed centuries of anti-Black violence. It recalled a trope made familiar by Frederick Douglass, the feminist, abolitionist and former enslaved, who in his autobiography describes with vivid imagery his aunt Hester's "heart-rending shrieks," after a gruesome attack from a white man. "I never shall forget it," Douglass wrote, "The louder she screamed, the harder he whipped; and where the blood ran fastest, there he whipped the longest."[80] Hartman's scholarship merely references aunt Hester's wretched scream rather than repeat the details of her torture because it, Hartman avows, would reproduce a type of cruelty.[81] But Mapp chose not to weave silence into her narrative. Even when the court system required her to recount the police conduct repeatedly at her trial and later during several appeals, Mapp would relive that terrifying encounter with the police and how her cries were treated like an illegitimate voice. In the end, the justice system offered her no redress.

Historically, courts have repeatedly failed to recognize Black peoples' victimhood, particularly Black women's voices when they have accused police of sexualized violence and

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[78] Defendant's Bill of Exceptions, 60.
[79] Defendant's Bill of Exceptions, 63. [emphasis added]
[80] Frederick Douglass, *1817?-1895: Narrative of the Life of Frederick Douglass, An American Slave* (Charlottesburg: Electronic Text Center, University of Virginia Library, 1999), 6.
[81] Saidiya V. Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York: Oxford University Press, 1997), 443.

misconduct. In historian Danielle L. McGuire's work, *At The Dark End Of The Street: Black Women, Rape, and Resistance*, she documents Black women who, throughout the twentieth century, survived physical and sexual violence at the hands of various individuals, including police, and how in several of those cases the courts offered no redress.[82]

At her criminal trial Mapp testified in her own defense and spoke to enduring sexual humiliation and police violence. Her testimony drew striking parallels to several other Black women who experienced similar, if not worse, abuse and spoke out about it over time. The criminal trial transcript details the testimony of an articulate and straightforward woman, who maintained her innocence and composure during the long and thorough cross examination by the prosecutor. "The words of her testimony leap off the transcript page," one legal scholar commented, "she showed no doubt, no remorse, no sense of guilt."[83] Yet Judge Lybarger decided against her credibility, ignoring her testimony about the police behavior. As a result, the court never addressed whether the officer's act of reaching down Mapp's turtleneck to recover the alleged warrant from in between her breasts was sexually intrusive, police conduct that "shocked the conscience" or illegal. This judicial oversight derived from social norms and age-old ideology related to Black womanhood, which influenced the criminal justice system. In Mapp's case, both the judge and jury treated Mapp as if "a Black woman's body was never hers

[82] Danielle L. McGuire, *At the Dark End of the Street: Black Women, Rape, and Resistance – A New History of the Civil Rights Movement from Rosa Parks to the Rise of Black Power* (New York: Vintage Books, 2011).
[83] Priscilla H. M. Zotti, *Injustice for All: Mapp Vs. Ohio and the Fourth Amendment* (New York: Peter Lang Inc., International Academic Publishers, 2005).

alone."[84] As with many women before her, Mapp won no sympathy from the six men and six women in her jury. Police had previously behaved the same way on May 23, 1957, when the officers invaded her home and her body precisely because of gender and race dynamics. Those immutable traits also made her victimhood invisible in the criminal justice system. This phenomenon had deep roots in history.

Historically, U.S. legal institutions have been indifferent to Black people's rights and routinely ignored their claims of sexual misconduct. As domestic slavery developed into a major institution, the legal system normalized and reinforced the ideology that Black people were commodities without personal rights. Their enslavement became a permanent, hereditary status centrally tied to race.[85] In addition, colonial powers created slave patrols which gave the white dominant group strict control over Black people, and at one point in time it obligated all white people to surveil and search Black people as suspicious threats to public safety. Eventually, slave patrols developed into professional state-sponsored institutions that protected the interests of the slaveholding class and terrorized most Black people with whom they made contact.[86]

Slavery impacted social life, including notions of humanity and what constituted justice.

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[84] Chana Kai Lee, *For Freedom's Sake: The Life of Fannie Lou Hamer* (Urbana: University of Illinois, 1999), 9, 11.

[85] For a more in-depth discussion on the role of law in ordering race relations and slavery since colonial America times, see A. Leon Higginbotham, *In the Matter of Color: Race and the American Legal Process; The Colonial Period* (New York: Oxford University Press, 2014), 38-40, 44.

[86] After the government and legislature planted the seeds to produce this policing institution, there was a move toward planting itself in the everyday social life of the community members. Thus, the slave patrols took on social meaning in the general lives of members of society, for both Black and White people. By the dawn of Reconstruction, slave patrols had evolved into the modern police force. In several Work Projects Administration narratives former enslaved people described fearing slave patrols because of their violent and unjust tendencies. These interviews also revealed that many slave patrollers became members of the new modern police force and applied slave practices and previous patroller tactics to enforce the new laws. Sally E. Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Massachusetts: Harvard University Press, 2003).

Overall, slavery itself, along with the slave patrols and other antebellum laws, functioned as culture-producing institutions, making it legal, as well as a cultural norm, to exploit kidnapped Africans as well as free Black people economically, politically, and sexually.[87] Slave owners and other segments of the U.S. population benefited from controlling Black bodies as capital, valuable commodities.[88] Black women's sexuality, in particular, became important to U.S. capitalism. It was linked to fertility, reproduction and childbirth which added to the labor force and augmented slave owners' property. Enslavers routinely expected even "adolescent girls to have children," historian Deborah Gray White writes, "and to this end they practiced a passive, though insidious kind of breeding."[89] Throughout the antebellum south, most states never recognized the rape of Black women as a crime.[90] Additionally, neither the enslaved nor free Black people could testify as witnesses against white people in court.

"Gender-specific images and slave owners' beliefs about race enforced stereotypes and myths of Black hypersexuality."[91] In *Laboring Women: Reproduction and Gender in New World Slavery*, Jennifer Morgan traces the emergence of sexual stereotype ideology and negative images of enslaved women, both of which she finds are linked to colonial fantasies and

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[87] For a more in-depth discussion of the emerging "sociology of culture" and to better understand how social life is shaped by "the production and marketing of cultural artifacts" such as music, art, drama, literature and laws, see William Sewell, *Logics of History: Social Theory and Social Transformation* (Chicago: University of Chicago Press, 2005), 151-162, 154.
[88] Collins, *Black Feminist Thought*, 57.
[89] Deborah G. White, *Ar'n't I a Woman?: Female Slaves in the Plantation South* (New York: W. W. Norton & Company, 1999), 98.
[90] White, *Arn't I a Woman,* 78.
[91] Jennifer L. Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2004), 7.

economic aspirations.[92] And according to scholar Patricia Hill Collins, much of what white imaginations had conjured up became "long standing ideas concerning the excessive sexual appetite of people of African descent."[93] Consequently, "from emancipation through more than two-thirds of the twentieth century," Deborah Gray White adds, "no Southern white male was convicted of raping or attempting to rape a [B]lack woman. Yet the crime was widespread."[94]

Such systemic sexual harassment of Black women by white men during Jim Crow "contributed to images of Black women as fair game for all men."[95] And in Mapp's view, Cleveland Police Department was no different. They operated within the climate of state-sanctioned racial segregation, making it easy for Sergeant Deleau's, and, for that matter, other law enforcement officers', individual racial animus to go unchecked against Mapp. But gender bias had equally contributed to her negative experiences with the law as well.

Heterosexism within the criminal justice apparatus oppressed Mapp and deprived her of fundamental rights in the courts. Feminist scholar Patricia Hill Collins contends that heterosexism "marks bodies with sexual meanings" similar to the ways that race and gender mark bodies with social meaning. The oppressive nature of heterosexism stems from a logic or "belief in the inherent superiority of one form of sexual expression over another and thereby the

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[92] Morgan, *Laboring Women*, 7.
[93] Collins, *Black Feminist Thought,* 140.
[94] Collins, 188.
[95] Collins, 61.

right to dominate."[96] Conceptually, it has two dimensions, one is symbolic and the other is structural. "The symbolic dimension," according to Collins, "refers to the sexual meanings used to represent and evaluate Black women's sexualities."[97] These symbols tend to encompass controlling negative images and language that sexually depict Black women as promiscuous, dirty, abnormal and sinful. The structural dimension, on the other hand, refers to the ways that social institutions are organized to reproduce heterosexism. In Mapp's encounter with the police and criminal justice system, for example, subjection and oppression are carried out structurally by creating and enforcing laws, customs and social practices.[98]

Both dimensions of heterosexism worked together to subjugate Mapp and forge a conviction in her felony trial. Sergeant Delau used language and verbal behavior to degrade Mapp and frame her according to negative sexual stereotypes. For example, in and out of court, he often referred to Mapp as "a foxy girl." Local press followed suit, always describing Mapp within a sexual gaze, as "eye-catching," "curvaceous," and "voluptuous." Such a characterization had transformative powers in courts.[99] On the surface, it focused on her gender. Underneath, it transformed Mapp from an individual standing before jurors and the judge as defendant into familiar tropes for evaluating Black women. Whether Delau meant to use "girl"

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[96] Collins, 139.
[97] Collins, 139.
[98] Collins, 139.
[99] Richard Bauman and Charles L. Briggs, *Voices of Modernity: Language Ideologies and the Politics of Inequality* (Cambridge: Cambridge University Press, 2003); Richard Bauman, *Let Your Words Be Few: Symbolism of Speaking and Silence Among Seventeenth-Century Quakers* (Tucson: Wheatmark, 2009); Lawrence Rosen, *Law as Culture: An Invitation* (Princeton: Princeton University Press, 2008).

as a pejorative was unclear on the record, but by using it he erased several redeeming and noteworthy facts about Mapp, who at the time was twenty-nine years old, divorced, a mother, but also an independent and complex woman. And with the metaphor "foxy," Deleau sexualized Mapp, suggesting on one hand that she was attractive and on the other hand implying she was a trickster. In court, Sergeant Delau recounted, "once we were in, she was playing games with us and talking cute, defying us." Delau's testimony was culturally coded; it framed Mapp according to widely-recognized and long-standing negative stereotypes of Black women, such as the Sapphire and Jezebel.

Today, these images are still used to portray a strong, aggressive, and dominant Black woman. The Jezebel stereotype also perpetuates a perception that "African American [and Black] women are always already aroused, available for, and open to sexual activity." According to scholar Elizabeth Ann Beaulieu, "such a stereotype has played an instrumental role not only justifying but in sanctioning and normalizing the sexual exploitation of [B]lack women."[100] While Jezebel signifies a hypersexual, seductive, and sexual predator, the Sapphire stereotype is predicated on Black women's interactions with white men.[101] The Sapphire controls men by emasculating them through insults and jibes. Delau portrayed Mapp as a difficult person, who accordingly "played games" with the police. Likewise, he found her "talking cute" to be insulting and considered her demand for a warrant a challenge to police authority. Based on

[100] Elizabeth A. Beaulieu, *Writing African American Women: An Encyclopedia of Literature By and About Women of Color* (Westport: Greenwood Press, 2006), 474.
[101] Beaulieu, *Writing African American Women*, 475.

Delau's portrayal, Mapp perpetuated both the Sapphire and Jezebel stereotypes.

Myths about Black hypersexuality impacted Mapp's trial, causing the prosecutor, the judge, and even the defense attorney to make assumptions about her and the evidence. Kearns' cross-examination of officer Haney about the search warrant's existence:

> Questions by Attorney Kearns (Q): Where is that search warrant?
> Answer by Officer Haney (A): I don't know.
> Q: Do you have it here?
> A: I don't have it.
> Q: Would you tell the jury who has it?
> A: I can't tell the jury who has it; no, sir.
> Q: And you were one of the investigating officers in the investigation by the police department?
> A: Yes.
> Q: But you can't tell us where the search warrant is?
> A: No, I cannot.
> Q: Or what it recites?
> A: No.
> Q: You yourself did not obtain the search warrant, did you, officer?
> A: No, I did not.[102]

The Ohio criminal court never considered the missing search warrant a violation of constitutional law or of Mapp's privacy.

While the case was about pornography, the state never established that the evidence presented against Mapp was in fact "obscene" and, therefore, pornographic. No one testified how or why it was obscene. The Jezebel trope fit perfectly for the state's narrative. It asserted that the police were the true victims and implied Mapp had inversely tried to seduce them by placing the fake warrant down her bosom. Since the Jezebel also signifies a sexual predator, it was not far-reaching when law enforcement, the prosecutor, the judge and jury assumed without

[102] Beaulieu, 16.

question that the four books and other materials that the police had seized from Mapp's home constituted obscenities.[103] Nevertheless, Judge Lybarger sent the case on to the jury.

Mapp's felony trial was completed in one day. During that short time, she found no sympathy or justice from the jurors who looked more favorably towards the state and its witnesses. After only twenty minutes of deliberation, the jury found Mapp guilty of possessing "obscene literature," which the original indictment defined as "lewd and lascivious."[104] Judge Lybarger sentenced her to a mandatory maximum term in prison.[105] He later divulged his personal opinion to the press stating that he believed Mapp had committed perjury on the witness stand. "She has consorted with known criminals in the community and she has apparently been skating on thin ice for some time." Judge Lybarger further remarked that "[s]he has reached the end of the rope."[106] Now a convicted felon, Mapp faced seven years in the Ohio State Reformatory for Women and a fine between $200 and $2,000.

A month after her conviction, Mapp challenged the constitutionality of the state's obscenity law in the Ohio Court of Appeals. On appeal, Kearns repeated his original legal claims but refined them to argue that Cleveland Police Department had violated the Fourth Amendment by conducting an "unreasonable search and seizure" and denying her due process

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[103] Most scholars and commentators of Mapp's case also made the same oversight, although obscenity was a key element of her case.
[104] Jury verdict form, C.C. 35 5M 1835-52, Court of Common Pleas, Case No. 36091. Cleveland Memory Project. Special Collections, Michael Schwartz Library, Cleveland State University. Identifier ll0238
[105] Original trial transcript of Mapp v. Ohio, Court of Common Pleas, Criminal Division, 118. Cleveland Memory Project. Special Collections, Michael Schwartz Library, Cleveland State University.
[106] "Gamblers' Friend Gets 1-7 Term in Obscenity Case," *Cleveland Plain Dealer*, September 11, 1958, 21.

when they failed to obtain a warrant. Additionally, he petitioned the court to suppress the evidence because, overall, police conduct displayed a "shocking disregard of human rights." The prosecutor responded by filing a motion to dismiss Kearns' claims arguing that the police's actions were not shocking at all. The prosecutor distinguished the police's act of reaching down into Mapp's bosom from the type of physical examination that occurred in *Rochin*, which the U.S. Supreme Court had previously ruled was conduct that "shocked the conscience." Unexpectedly, the prosecutor blamed the victim, asserting that "if anything" Mapp's conduct was shocking because she had "showed a shocking disregard of the law."[107] Consequently, Mapp received no justice from the Ohio Court of Appeals but she refused to be criminalized and took the fight to the Supreme Court of Ohio.

On March 23, 1960, the Supreme Court of Ohio issued its decision in which four of the seven justices voted to reverse the state Court of Appeals' decision to sustain her conviction. However, what seemed like a victory for Mapp turned out to be yet another defeat. She eventually lost the appeal because of a technicality under Ohio law, which required a supermajority to deem laws unconstitutional. The highest court of Ohio ultimately affirmed her conviction, leaving her to turn to the federal court system for redress. Eventually, the U.S. Supreme Court heard her plea.

It was March of 1961, and the active and modern use of the Fourth Amendment did not

[107] Brief of Appellee to Eighth District Court of Appeals of Ohio, 6. Cleveland Memory Project. Special Collections, Michael Schwartz Library, Cleveland State University. Identifier ll0269.

begin until Mapp argued her case before the U.S. Supreme Court. *Mapp* offered the nation a definitive answer for what courts *must* do to all "evidence secured by official lawlessness." Law enforcement officials, prosecutors, defense attorneys, civil liberty organizations, and activists from across the nation waited anxiously for the Supreme Court to decide *Mapp*.[108] The *Mapp* decision, changed the law in three ways. First, *Mapp* required police to establish that probable cause existed for an arrest before conducting a search. Second, it required police to testify in a separate proceeding, commonly referred to as a "*Mapp* hearing," to the grounds that led to the arrest and search. The new court proceeding was predicated on the idea of process—a fair and impartial hearing—in which an individual may lose his or her liberty, reputation, and/or property. Third, under the exclusionary rule, criminal court judges were required to find evidence obtained without probable cause or a warrant inadmissible.

The Supreme Court's decision in *Mapp* signaled that it would assume a greater role in state criminal justice matters. The Court's advent of the exclusionary rule as a judicial technique to enforce the Fourth Amendment in the *Weeks* decision initially only applied to federal police conduct. When the Warren Court ultimately imposed *Weeks*' exclusionary rule onto the states through *Mapp,* the Court made a historic pivot. It turned individual freedom from unreasonable search and seizure into a criminal law concept and made it an enforceable right. This pivot constituted a swift and total federalization of a major police practice but also a sovereign state power. At the time, scholars characterized the Court's action as revolutionary because it placed restrictions on broad state powers and law enforcement's search and seizure practices.[109]

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[108] "A Landmark Decision," *Cleveland Press,* June 21, 1961. Cleveland Memory Project, http://images.ulib.csuohio.edu/cdm/compoundobject/collection/law/id/2665/rec/13.

[109] Bruce Berner, "Search and Seizure: Status and Methodology," *Valparaiso Law Review* 8, (1974): 471-583; Theodore Souris, "Stop and Frisk or Arrest and Search: The Use and Misuse of Euphemisms (Comments upon the Courts, the Police, and the Rest of Us, by Professor Herbert L. Packer)," *Journal of Criminal Law, Criminology, and*

Associate Justice Abraham Fortas revealed the majority's rationale behind the decision in *Mapp* explaining that the Court had deliberately shifted away from its traditional focus of determining the constitutionality of economic legislation toward a new focus: adjudicating problems "between Government—the State—and the rights of the individual."[110] Justice Fortas further characterized the impact of the Supreme Court's actions as an incitement of "a social revolution of considerable importance" by extending the Bill of Rights "across the board." However, the Court's *Mapp* decision did not derive from a revolutionary intent, and neither was it a radical shift from local practices or the contemporary criminal procedure law. When the Supreme Court heard Mapp's case, the trend among states had already begun to change toward the direction the Court would eventually take. By 1960, the year preceding *Mapp*, twenty-six states already excluded unlawfully seized evidence in their criminal courts.[111] Legal commentators had already predicted the remaining states, police and prosecutors would have to dramatically alter their practices to accord with *Mapp*.[112] Thus the trend began first in states, and the Supreme Court followed. But what made the Court's decision revolutionary at the time was that *Mapp* marked the beginning of a series of Court decisions that enforced the first eight amendments of the U.S. Constitution and used the Fourteenth Amendment to make them enforceable rights in state courts.

Mapp received equal attention for being a resilient individual as she did from the national

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Police Science 57, no. 3 (1966): 251-264; Herman Schwartz, "Stop and Frisk (A Case Study in Judicial Control of the Police)," *Journal of Criminal Law, Criminology, and Police Science* 58, no. 4 (1967): 433-464; Joseph Stengel, "Restriction of Search and Seizure," *The Police Chief* (October 1967): 210; Josh Segal, "'All of the Mysticism of Police Expertise': Legalizing Stop-and-Frisk in New York," *Harvard Law Review* 47, (2013): 543-616.

[110] Stengel, "Restriction of Search and Seizure," 210, note 11, citing *Washington Post*, March 27, 1966. American Civil Liberties Union Records MC 001, Box 659 Folder 9.

[111] See table 1.1 in Elkins v. United States, 364 U.S. 206, 224-25 (1960).

[112] Arlen Specter, "Mapp v. Ohio: Pandora's Problems for the Prosecutor," *University of Pennsylvania Law Review* 111, no. 1 (1962); see Roger J. Traynor, "Mapp v. Ohio at Large in the Fifty States," *Duke Law Journal* no. 3 (1962).

impact of her case. She refused to give in to local police, courts that refused to enforce her Constitutional rights, and Ohio's highest tribunal which validated her conviction based on a criminal statute that majority of its judges considered unconstitutional. Mapp and her case also generated celebrity attention in popular culture. By the mid-1960s, the imposing and uncompromising stage actress Gloria Foster, who played in historical dramas on and off Broadway that chronicled untold Black history and culture, signed to play the principal role of "Mrs. Mapp vs. Ohio" in the television series, *You've Got a Right*.[113] In the 1970s, Mapp's story inspired the proposal of yet another pilot television series, *The Sword and the Scale*, which depicted her legal battle and other cases that advanced criminal procedure rights offering the public accurate information on the U.S. judicial system.[114] Both the National Association for the Advancement of Colored People (NAACP) and the American Civil Liberties Union (ACLU) hailed the Court's ruling in *Mapp* as "a deterrent to cops in the [fifty] states busting into minority homes without court authorization."[115] Wayne LaFave, professor of law emeritus and a leading scholar on search and seizure, deemed Mapp the "Rosa Parks of the Fourth Amendment."[116] All law students, lawyers and law enforcement officers would be taught about her case for decades to come.

Conclusion

When Dollree Mapp challenged police authority at her home in Cleveland, Ohio in May

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[113] "Gloria Foster Signed for TV Star Role," *New York Amsterdam News*, February 19, 1966, 20; see "Gloria Foster, Commanding Stage Actress, Is Dead at 64," *Playbill,* October 5, 2001, http://www.playbill.com/article/gloria-foster-commanding-stage-actress-is-dead-at-64-com-98986.

[114] J. C. Alexander, *The Sword and the Scale: A Television Series*, developed by the Nelson Company in association with the American Judicature Society and the Federal Judicial Center. Subcontract No. Sub 74-4 (S74-21) Dec 1974, 165-68, https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=34202.

[115] Major Robinson, "100 Black Women Want Dollree Mapp Free," *New York Amsterdam News,* February 2, 1980, 18.

[116] Ken Armstrong, "Dollree Mapp, 1923-2014: The Rosa Parks of the Fourth Amendment," *Essence Magazine*, December 08, 2014, http://www.essence.com/2014/12/08/dollree-mapp-rosa-parks-fourth-amendment.

1957, it began merely as her personal fray against the Police Department's break-in and illegal search of her home. As that ensued, she resisted further unconstitutional behavior, humiliation and violence. Mapp had no intent to be a transforming agent, but she set in motion national reform of police practices. Her militancy prevented her from giving in and giving up, and caused her to pursue justice before the Supreme Court. While several scholars write about her Supreme Court victory, advancing Fourth Amendment rights to all citizens, few focus on the sexually intrusive police search, or take an intersectional approach to understand the effects of housing discrimination and heterosexism in the criminal justice system. No one explores how courts could convict Mapp on pornography charges without first establishing that the evidence illegally seized by police was in fact pornographic. From reading the original trial transcript, it becomes apparent that the police, prosecutor, judge, jury and even Mapp's own defense attorney took for granted that the material is pornography. In this chapter, I argue that intersectionality and feminist theory explain how the state witnesses framed Mapp through heterosexist ideology, causing the court to make assumptions about Mapp and the evidence.

Mapp's ultimate victory was not born exclusively from her independent conflict. Rather, it was the culmination of years of Fourth Amendment activism and more. Mapp's individual fight with police and state law joined a much longer history of struggles in which several citizens and civil rights organizations had challenged police for unreasonable searches, invasions of privacy, race-based dragnets, use of excessive force and general brutality.[117] Chapter three demonstrates that several of these much earlier campaigns began in New York and attempted to do at the local level what *Mapp* achieved nationally. It also encompasses narratives from Black Muslims in the Nation Of Islam, who were targets of police abuse and unreasonable searches as

[117] Herbert H. Haines, *Black Radicals and the Civil Rights Mainstream, 1954-1970* (Knoxville: University of Tennessee Press, 1995).

well as a potent source of resistance in New York City before and immediately after the *Mapp* decision. In later chapters, I assert that *Mapp* had a direct impact on the New York Police Department and law enforcement agencies across the nation. Chapter four explores the social and legal impact of *Mapp*. Despite the decision, the NYPD continued unreasonable searches in New York City's large Black and Puerto Rican communities, whose members often turned to the Congress On Racial Equality and other civil rights organizations for protest and individual justice. Finally, scant scholarship connects Mapp's police encounter in Ohio to the complex and contradictory motivations behind New York's support of stop-and-frisk and no-knock bills. Chapter five historicizes the origins of stop-and-frisk and no-knock, linking it to governor Nelson Rockefeller's 1964 anti-crime bill that not only derived from an antagonism to the *Mapp* decision, but also his much earlier political agenda and structural concern for reforming criminal justice and police. In conclusion, chapter six demonstrates that police enforcement of the new stop-and-frisk law impacted local jail populations, and led several Black and Puerto Rican New Yorkers to seek help from civil rights organizations to challenge police stops. The New York statute gained national attention and influence on other states to pass similar laws. As stop-and-frisk spread across the United States, riots began erupting because Black communities resisted harassing police encounters and brutality. Several of police stops led to criminal court challenges. Ultimately, four years after New York's stop-and-frisk statute went into effect, and other states followed, the United States Supreme Court decided police stop-and-frisk practices were constitutional.

CHAPTER THREE

NEW YORK FOURTH AMENDMENT BATTLES: POLICE TARGET NATION OF ISLAM POST-*MAPP* (1961-1963)

Malcolm X asked newspaper and television reporters: "If the Black man can't get justice in New York City, where in this country can he get it?"[1] Malcolm X posed this question in 1963, after a trial and conviction of two Black Muslims, who police had stopped, searched and arrested for selling newspapers for the Nation of Islam (NOI).[2] This (in)justice happened less two years after the Supreme Court issued *Mapp v. Ohio* (1961), a landmark decision in criminal procedure law, that strengthened the Fourth Amendment rights of criminal defendants in courts and protected residents of New York as well as citizens nationwide from "unreasonable searches and seizures" conducted by law enforcement without a warrant or probable cause for arrest.[3] According to Malcolm X, New York City stood at the epicenter of the fight for justice in America. This chapter explores how members of Black communities in New York City viewed *Mapp v. Ohio*. It analyzes how *Mapp* changed the law and whether it impacted social life for Black New Yorkers in the early 1960s. New York newspapers, the *Times, Amsterdam News*, as well as Black radical periodicals, such as *Muhammad Speaks* and the *Liberator* yielded limited Black discussion of the landmark ruling. Yet post-Mapp, between 1961 and 1963, I discovered

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[1] Joseph Walker, "Justice Mocked At Muslim Trial in New York City," *Muhammad Speaks*, February 4, 1963, 4. NYPL Schomburg Center for Research in Black Culture, Manuscripts, Archives and Rare Books Division. New York, NY.

[2] Malcolm Little joined NOI while serving a ten year sentence in a Boston prison. Following the organization's policy, he rejected names imposed by former slave owners and became Malcolm X. After his prison release, he went to Chicago to meet Elijah Muhammad and under his private tutelage Malcolm X became totally devoted to Muhammad's preaching. Edward E. Curtis, *Black Muslim religion in the Nation of Islam, 1960-1975*. (Chapel Hill: University of North Carolina Press, 2006), 2-3; Martha F. Lee, *The Nation of Islam: an American Millenarian Movement*. (Syracuse, N.Y.: Syracuse University Press, 1996), 19-36.

[3] Mapp v. Ohio, 367 U.S. 643, 654-655 (1961).

NOI and other struggles against arbitrary police stops, searches and unjust criminal prosecutions in New York. The central issues addressed are: how did NOI members view New York courts and criminal justice? How did this rights movement emerge: was it from spontaneous confrontations or were they skillfully organized efforts from preexisting institutions? This chapter reveals the early roots of Nation of Islam activism against police violations as well as how post-*Mapp* NOI leadership investigated, organized and collaborated with other civil rights organizations to collectively resist unreasonable police searches, brutality, and contest arrest practices. But their activism against unfair criminal procedures and abuse of police powers did not gain the level of public consciousness that it deserved.

Among scholarship and histories of the civil rights movement, NOI struggles and protest against the nation's largest police force search practices have gone unrecognized.[4] Sociologist Aldon Morris's work explores the origins of the civil rights movement, "focusing on the crucial first ten years of the modern movement, 1953-1963," he gives attention to how social organizations and black churches launched movements in the South.[5] "The [B]lack church" Morris found, "functioned as the institutional center of the modern civil rights movement."[6] Morris chronicles the movement's religious leaders, who he describes as "charismatic," skilled in managing people, and economically independent of white society, but he finds the movements stemmed from churches' finances for protest, and an organized mass base, comprised of everyday people. [7] While Morris provides foundational scholarship, he overlooks a much longer

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[4] Aldon Morris, *The Origins of the Civil Rights Movement: Black Communities Organizing for Change.* (New York: Free Press, 1984); Martha Biondi, *To Stand and Fight: the Struggle for Civil Rights in Postwar New York City* (Cambridge:Harvard University Press, 2003); Marilynn S. Johnson, *Street Justice: A History of Police Violence in New York City* (Boston: Beacon Press, 2004); Thomas Sugrue, *Sweet Land of Liberty: the Forgotten Struggle for Civil Rights in the North*. (New York: Random House, 2009).
[5] Morris, *The Origins of the Civil Rights Movement*, vi, x, xii-xiii.
[6] Morris, 4.
[7] Morris, 4, 7-8

history of civil rights activism in the urban North and the role played by the NOI, which during this period was already an active religious group and firmly entrenched in the protest community. Martha Biondi's history of postwar New York City recounts how Black residents mobilized in various campaigns to hold police accountable for excessive force and systemic violations of citizens' rights in Black neighborhoods.[8] Biondi further concludes this collective activism, which also included advocacy for greater Fourth Amendment protections decades before the *Mapp* decision, "changed the social, political and cultural landscape of New York City."[9] While religious institutions figure prominent for both Morris and Biondi's seminal works neither cover NOI contributions to this protest history. Scholar Marilynn S. Johnson provides a comprehensive history of the NYPD and includes an analysis of local protests against brutality during the early 1960s.[10] However, Johnson overlooks Rockefeller's criminal justice policies that reformed penal laws to increase police powers and limit citizens' Fourth Amendment protections in courts, which also fostered tensions between law enforcement and Black communities.[11] This chapter builds on and follows the trajectory of that early advocacy. It analyzes the first three years following the *Mapp* decision to provide an in-depth description of police encounters that involved questionable stops and illegal searches as well as the NOI's understudied pushback and abilities to rally support for individual victims.

Critical race theory helps to interpret these under-acknowledged historical events and, as a methodology, it provides a tool to "counter" deficit storytelling and offers a lens for interpreting why *Mapp* did not offer NOI members recourse. Critical race theorist Kendall

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[8] Biondi, *To Stand and Fight*, 15, 287.
[9] Biondi, 272.
[10] Marilynn S. Johnson, *Street Justice: A History of Police Violence in New York City* (Boston: Beacon Press, 2004), 229-234, 286.
[11] These tensions between police and the Black community and activism around search and seizure will come into full view in 1964 after the passage of New York's stop-and-frisk law, discussed later in chapter five.

Thomas writes that "American constitutional history remains one of the few disciplines in which the call for [a] rigorous reconstruction of our national past from the bottom up has for the most part been ignored."[12] In other words, a cultural history of American constitutionalism does not start from the position of the least powerful and courts do not consider constitutional matters by examining records that fully capture their experiences. Thus Thomas argues that a court should "identify and interpret the records left by those who have experienced the American constitutional order from its underside."[13] To that point, this chapter applies a counter deficit storytelling approach because of the space it offers to conduct and present research grounded in the experiences and knowledge of people of color.[14] I assert that critical race theory should inform a critical race methodology in history. The Nation of Islam press provides contemporaneous records for reconstructing counter-stories about police *Mapp* violations, abuse and convictions in courts. In the remaining chapters, I use the NOI newspaper, mainstream white and Black press, along with grassroots newspapers, and records from traditional civil rights organizations to provide the basis for understanding Mapp's impact on Black communities, law enforcement and the rise of stop-and-frisk law. Ultimately, through these sources, communities of color tell their stories, and this history.

This chapter is as much about police violations of civil rights as it is about the ordinary people, who belonged to the NOI, and their struggles with policing in Harlem, Bedford Stuyvesant and other Black neighborhoods.[15] Psychologist and African American scholar

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[12] Kendall Thomas, "Rouge et noir reread". *Critical Race Theory: the Key Writings That Formed the Movement / Edited by Kimberlé Crenshaw ... [Et Al.] (*1995), 466, 467.
[13] Thomas, "Rouge et noir reread", 466, 467.
[14] Derrick Bell's works, *Faces at the Bottom of the Well: the Permanence of Racism*. (New York: Basic Books, 1992) and *Race, Racism and American Law* (New York: Aspen, 2000) also influences my methodological approach to examine marginalized group experience to understand how race and law intersect as modes of oppression and redress.
[15] Harlem and Bedford Stuyvesant were New York's largest Black communities.

Kenneth B. Clark studied Black social life in these neighborhoods, which he described as the *Dark Ghetto*. A Harlemite himself, Clark elaborated:

> The dark ghettos are social, political, educational, and—above all—economic colonies. Their inhabitants are subject peoples, victims of the greed, cruelty, insensitivity, guilt, and fear of their masters. The objective dimensions of the American urban ghetto are overcrowded and deteriorated housing, high infant mortality, crime, and disease. The subjective dimensions are resentment, hostility, despair, apathy, self-depreciation, and its ironic companion, compensatory grandiose behavior. The ghetto is ferment, paradox, conflict and dilemma. Yet within its pervasive pathology exists a surprising human resilience.[16]

Clark's analysis is compelling; however, I contend these neighborhoods were Black communities, made up of complex social systems whose inhabitants constantly stood up with resilience to fight power structures on multiple levels. While these NOI stories have largely been forgotten over time, this historical study chronicles NOI encounters with law enforcement and how members fought back during the first half of the 1960s.

Despite *Mapp*, members of NOI complained that the NYPD and state courts had particularly singled them out as targets for abuse. *Mapp* did not give them a recourse because at the time New York highest court had not implemented the decision throughout the court system.[17] And at the time, victims of police abuse and illegal home invasions had little institutional recourse available.[18] Consequently, leaders of NOI protested legal institutions, exposing their tells of injustice wherever it occurred.

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[16] Kenneth B. Clark, *Dark Ghetto: Dilemmas of Social Power* (Middleton: Wesleyan University Press, 1989), 11.

[17] In the early 1960s, NYPD offers often targeted NOI members for unreasonable searches, including warrantless searches of religious sites, and brutality. During this early post-*Mapp* period, New York's Court of Appeals had not yet mandated lower courts to follow the Supreme Court's decision in *Mapp v. Ohio.*

[18] Between 1960 and 1962, Louis E. Lomax wrote New York City paid more than one million dollars each year to settle police brutality cases. Louis E. Lomax, *The Negro Revolt*. (New York: Perennial Library, 1971), 59-60; It should be noted, during this time, New Yorkers could also file complaints against police misconduct with the Civilian Complaint Review Board, but several critics found the police review process inadequate and not an impartial venue. Later the Patrolmen's Benevolent Association successfully defeated proposals for a civilian lead review board, despite strong support from civil rights groups and leading politicians.Charles Brecher, *Power Failure: New York City Politics and Policy Since 1960*. (New York: Oxford Univ. Press,1993) p. 8.

In New York City, like in other densely populated urban areas, Black Muslims complained police routinely targeted them for surveillance, arbitrary street stops, illegal searches of NOI mosques, arrests that lacked probable cause, and police brutality.[19] These occurrences became flashpoints of robust tension between NOI and the police.[20] NOI followers fought back by using writing as resistance, publishing and investigating police violations of Black Muslim rights; questioning laws and the legitimacy of democracy, and conducting mass protest at state courts, at trials and in the streets, and consequently helped to broaden other areas of defendants' rights. The white press rarely devoted much attention to stories of the police's violation of Black Muslim rights, and they covered none of the post-Mapp searches, arrests and prosecutions examined in this chapter. Oddly, neither did many Black newspapers publish such stories. Silence from the Black press reinforced white patterns of silence. However, alternative sources told these stories.

James Baldwin addressed the plight of Black Muslims, and the general silence around police abuse of Black people and lack of protection in the United States:

> There is no way for me not to have an emotional and sympathetic response to the Muslims because they only catalogue what I know of Harlem streets; what the larger segment of the black bourgeoisie and white liberals pretend does not exist. And because of the fact that the bulk of the white press created a situation where one has to read the Muslim paper to know what's happening. The Muslims operate to protect Negro boys and girls on the streets, whereas the police don't.[21]

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[19] "Rochester Negroes Unite for Freedom," *Muhammad Speaks*, March 18, 1963, 11; "Police Desecration of Mosque Should Be Lesson to Integrationists, says Minister," *Muhammad Speaks,* January 7, 1966, 27; "Black Community United Against: Wild Police Assault on Muslim Mosque," *Muhammad Speaks*, December 31, 1965, 9. "The Malcolm X Collection, papers" NYPL Schomburg Center for Research in Black Culture, Manuscripts, Archives and Rare Books Division.

[20] Themis Chronopoulos, "Police Misconduct, Community Opposition, and Urban Governance in New York City, 1945-1965". *Journal of Urban History.* 2015. While Chronopoulos provides a thick description of the problems that led to a deterioration of police-community relations, he under appreciates the struggle of members in the Nation of Islam and finds the NOI was not as successful as CORE at gaining the support and membership of Black New Yorkers in the early 1960s.

[21] "James Baldwin At Home in Harlem," *Muhammad Speaks*, July 19, 1963, 4. NYPL Schomburg Center for Research in Black Culture, Manuscripts, Archives and Rare Books Division.

Here, Baldwin pointed out that the Nation of Islam experience was not unique because most African Americans equally suffered from unjust policing and criminalization. What happened to Black Muslims in New York City reflected what also happened to most Black people in America. "The Messenger Muhammad," as NOI members referred to NOI spiritual leader Elijah Muhammad, publicly discussed blatant religious profiling by police as well as the media's mischaracterizations of crime.[22] Muhammad says, "the singling out of Muslims for alleged criminal conduct, while no such designation was made whenever a crime was committed by a Catholic, a Protestant or a Jew" to be problematic. "Regardless of religion or other differences, we are all in the same ditch. We must all lay aside such differences and grasp a common chain that can pull us into true freedom."[23] Here Muhammad engendered a philosophy of solidarity, arguing no hierarchy of injustice or criminal profile existed among the oppressed.

Several citizens complained of NYPD invasions, illegal searches, and menacing encounters during the early post-*Mapp* years.[24] Between 1961-1963, the Nation of Islam (NOI), a Black Muslim religious organization, never paused to praise *Mapp*'s landmark opinion in its newspaper. Instead, it continuously called out unfair policing and racial discrimination within the New York criminal justice system. In the face of police intrusions, violence and state retaliation, its members described various degrees of police terror to their leaders and attorneys in order to force police and courts to comply with *Mapp* and end brutality.

Elijah Muhammad broadcast stories of systemic abuse and flagrant police conduct to a

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[22] NOI members believed their leader Elijah Muhammad was a prophet "Messenger" of their God, Allah.

[23] Statement by the Messenger of Allah, "On Crime and Society," *Muhammad Speaks,* September 29, 1963, 3. NYPL Schomburg Center for Research in Black Culture, Manuscripts, Archives and Rare Books Division. New York, NY.

[24] Edward E. Curtis, *Black Muslim religion in the Nation of Islam, 1960-1975*. (Chapel Hill: University of North Carolina Press, 2006), 142, 144, 145-46; Vibert L. White, n.d. *Inside the Nation of Islam: a Historical and Personal Testimony by a Black Muslim*. (FL: University Press of Florida,\C2001) See chapter four, 42-61; Dawn-Marie Gibson and Herbert Berg, *New perspectives on the Nation of Islam*. (New York: Routledge, 2017).

growing number of followers and large audiences of non-members alike. He shared these narratives through the press and NOI's weekly radio station airing in major cities across the nation. He relentlessly made visible what the white, mainstream press ignored. Scholar Edward E. Curtis argues that "Elijah Muhammad began building an Islamic movement that would cement itself in American historical memory as a [B]lack nationalist organization committed to racial separatism and ethnic pride," teaching its members the need for self-determination, Black-owned business, schools and a "[B]lack consciousness freed from the scars of colonialism."[25] Muhammad attracted a large following from Black communities in the early 1940s by setting up temples in Detroit, Chicago, Milwaukee, Washington, D.C., and other urban areas with large Black populations.[26] As part of the attraction, scholars and sociologists who studied Muhammad's movement, noted that the NOI imparted a sense of dignity and self-worth to its members.[27] These ideals set in motion a Black Power movement which emphasized the development of Black pride, Black institutions, and an effective Black presence. These were qualities that motivated followers to be resilient and continue fighting against the police state and the police's violations of their rights.

Muhammad Speaks: NOI Newspaper Writing and Resistance

The NOI published its own professionally edited newspaper, *Muhammad Speak*s, which spoke directly to the problems of Black Americans and the Black diaspora. It began as a

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[25] Curtis, *Black Muslim religion in the Nation of Islam, 1960-1975*, p. 2-3. See also Dawn-Marie Gibson and Herbert Berg, *New perspectives on the Nation of Islam*. (New York: Routledge, 2017).

[26] By the 1930s the Nation of Islam took shape at a time when religious and social organizations questioned whether it was worth it to seek the acceptance of white people.

[27] The NOI offered African Americans a proud history by teaching them that they were "Original People" who would reclaim greatness, while labeling White bodies as "devils." Like Booker T. Washington, Jamaican born Marcus Garvey, founder of the Universal Negro Improvement Association (1917), supported African American self-sufficiency and the separation of Black and White people. Curtis, *Black Muslim religion in the Nation of Islam*, pp. 2-3, 15-35; Martha F. Lee, *The Nation of Islam: an American Millenarian Movement*. (Syracuse, N.Y.: Syracuse University Press, 1996), 19-36; Eric Lincoln *The Black Muslims in America* (Boston: Beacon Press, 1961).

biweekly newspaper in 1960, then became weekly in 1965 until national distribution ended in 1975.[28] The newspaper used photographs and editorial cartoons to illustrate their points. It followed Muslim practices, taught Black people racial pride, and offered advice on various social issues, including the importance of health. In doing so, I argue *Muhammad Speaks* provided a counter hegemonic discourse to what readers typically found in mainstream media sources. Writers edited the newspaper to represent protest through journalism. For example, the newspaper radically reported that what happened to Muslims reflected acts of discrimination that happened to most Black people in New York and oppressed people around the world. In addition to covering Muslim activities, *Muhammad Speaks* often featured articles on criminal matters, including court cases that resulted from unjust police encounters on streets, in homes, and Mosques. The paper did not explicitly cover the *Mapp v. Ohio* decision, but it reprinted partial texts of trial testimonies that exposed the ineffectiveness of *Mapp* in New York and elsewhere.

NOI Early Challenge of Unreasonable Police Stop and Search Practices: Johnson X

Just as in Ohio, Black New Yorkers, including members of the Nation of Islam, had been resisting police violations of their rights since the Great Migration. The NOI's stature in leading this struggle came to the fore in the fall of 1957 when New York City officers stopped and searched a Black Muslim on the streets of Harlem.[29] A group of policeman brutally beat NOI member Johnson Hinton (Johnson X) and then took him into custody. Malcolm X organized

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[28] Christopher M.Tinson, *Radical intellect: Liberator magazine and black activism in the 1960s*. (Chapel Hill: University of North Carolina Press, 2017).

[29] On April 27, 1957, officers Ralph Placence and Michael Dolan stopped and searched Johnson Hinton at corner of 126th Street and Lenox Avenue in Harlem. After an argument ensued, Placence and Dolan then brutally beat Hinton. Later, in a civil trial for damages, the officers testified that police policy and law "required the use of excessive force to prevent a riot." But the jury also heard that at least four other officers "jumped and beat Hinton while he was on the ground." *See* "Muslim Wins $75,000 in Damages from City: Muslim Award," *New York Amsterdam News,* May 7, 1960, 1.

hundreds of NOI members on a march to the 28th precinct in Harlem where police held Johnson X. The 28th precinct was known as the "slaughterhouse" amongst the locals because police typically beat and sometimes killed people. When Malcolm X arrived, he demanded the immediate release of Johnson X and an opportunity to check on his health. Present at the precinct were Police Inspector McGowen, Deputy Commissioner Walter Arm and Deputy Inspector Robert J. Mangum, who was Black. The police leadership was struck by the NOI. Never before had they witnessed such a large number of Black Muslims publicly demonstrate.[30] The police leaders were impressed by the hundreds of Black men who surrounded the entrance dressed in suits, ties, hats and overcoats as they demanded release of their brother.[31] And they were also impressed by their leader after observing the massive group become silent upon Malcolm X's command. "I wonder who that nigger is?," said a sergeant standing at the precinct door.[32] Shortly afterward, Malcolm X entered the precinct to check on Johnson. When he saw a gaping hole in Johnson's head, where a policeman's stick had split it, and his face swollen and bruised, Malcolm X demanded that police provide immediate medical attention. Only after they complied did Malcolm X and the crowd of demonstrators leave.[33] Johnson X survived despite the fact that doctors placed a silver plate in his head.[34] The protest elevated Malcolm X's status in the community and his position in the NOI. He became a national spokesperson for the NOI

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[30] James Hicks, the managing editor of the *New York Amsterdam News*, was present on that day and recounted the episode to Peter Goldman, who describes it in his book, *The Death and Life of Malcolm X,* account available online, http://www.usprisonculture.com/blog/2012/08/12/the-day-that-malcolm-won-harlem-over/

[31] Other accounts estimate Malcolm X arrived with over 2,600 people who surrounded the precinct on 123rd street between Seventh and Eighth avenues. See Goldman, *The Death and Life of Malcolm X,*--.

[32] Hicks recalls a Black officer at the door, who said, "Goddamn Muslims – who the hell are they anyway?" Goldman,--.

[33] Later that day, Malcolm X also organized a well-attended march to Harlem hospital where Brother Johnson recovered.

[34] *Muhammad Speaks* printed a large photograph of Johnson X in a full-page editorial, showing "the hole beaten into his head by law-breaking white New York police officers" and reported that the officers were never punished or reprimanded for the false arrest and brutal beating. The City of New York, however, awarded a settlement of $75,000 to Johnson X. *See* "Small 'Payment,'" *Muhammad Speaks,* March 1962, 17; reprinted, "Another Premature Funeral," *Muhammad Speaks*, December 6, 1963, 2.

and his rise to power accompanied an expansion of the NOI. By 1961, the organization was present in twenty-seven states with almost 200,000 members and sixty-nine mosques.[35] Having emerged as an effective leader of ordinary Black urbanites, Malcolm X would remain a dynamic activist and articulate spokesman against police mistreatment and racial injustice. He inspired activist sympathizers and support from civil rights organizations until his untimely death.

Malcolm X's activism at Harlem's "slaughterhouse" precinct was novel for the NOI and the scenes from that day had a broad social impact. Malcolm X believed that lessons were learned from adversity and he used Johnson X's police-rendered abuse to set the stage for a unique protest style that sent a message to the state and the public that Black Muslim solidarity and non-violent stillness proved to be powerful tools for protesting state-sponsored abuse. What occurred represented an ethos of protest, one that expanded the lens of the civil rights movement beyond the fight against discrimination in the South, and in the North and West, yet even further beyond Jim Crow segregation in schools, employment and housing. Never before had the public's attention been so drawn to police targeting of Islamic religion and NOI's methods for protesting illegal searches, police invasion and brutality.

Before and After Mapp, "Nobody Bothered": Search and Seizure in New York

In 1961, Black people expected the Supreme Court's decision in *Mapp* to make a difference in New York and nationwide. The *Liberator*, an independent Black magazine, summarized life in New York City prior to *Mapp* as a place where "the standard operating procedure" was for police to "ignore citizen[s'] basic rights to due process against unwarranted

[35] Curtis, *Black Muslim religion in the Nation of Islam*. White, *Inside the Nation of Islam:* See Introduction, chapters 1 and 3.

search and seizure."[36] Native New Yorker and celebrated Black writer, James Baldwin, criticized the prior search and seizure law as well as "the abysmally ignorant" police officers who routinely used intimidation tactics, unlawful arrests and detentions against Black people.[37] "These forces," Baldwin wrote "were put in power by 'respectable' White people to keep [Black people] in [their] place."[38] New York City's Deputy Police Commissioner openly admitted that "[b]efore [the *Mapp* decision] nobody bothered to take out search warrants," but afterwards, "[w]e had to reorganize our thinking, frankly."[39]

Statistics in the first year after *Mapp's* ruling indicate a major shift in certain conviction rates in New York City. Gambling convictions decreased by 35 percent and drug convictions dropped almost 40 percent.[40] The sudden decline in criminal convictions suggests that, prior to *Mapp,* New York City police routinely relied on unlawful searches of people and seizures of evidence in order to combat underground economic activity. New York City Police Department's Deputy Commissioner for Legal Matters, Leonard E. Reisman, confirmed that "prior to *Mapp*, search warrant usage was negligible," but after *Mapp*, approximately "5,132 search warrants were used in the city" in 1963 alone.[41] As a result of those warrants, the City prosecuted 4,282 gambling cases and 682 narcotics cases.[42] While applications for warrants may

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[36] Robert Arnold, "Rockefeller's Police State." *The Liberator,* June 1964, 4-5. New York Public Library (NYPL) Schomburg Center for Research in Black Culture, Manuscripts, Archives and Rare Books Division. New York, NY.
[37] *Muhammad Speaks*, October 25, 1963, 2. NYPL Schomburg Center for Research in Black Culture, Manuscripts, Archives and Rare Books Division.
[38] *Muhammad Speaks*, 2.
[39] Quoted in Griswold, *Search and Seizure,* 8 citing *New York Times,* April 28, 1965, 50.
[40] Josh Segal, "All of the Mysticism of Police Expertise: Legalizing Stop-and-Frisk in New York, 1961–1968," *Harvard Civil Liberties Law Review* 74, no. 2 (2012): 584, citing "Policy Prosecutions Here Cut by Curb on Evidence," *New York Times*, July 16, 1962, 1.
[41] Lawrence P. Tiffany, Donald M. McIntyre, and Daniel L. Rotenberg, *Detection of Crime: Stopping and Questioning, Search and Seizure, Encouragement and Entrapment*, (Boston: Little, Brown & Co., 1967), 3-4, 12-14 at 100, n. 6. (citing Letter from Leonard E. Reisman, Deputy Commissioner of Police for Legal Matters, New York City Police Department, to author (June 8, 1964).
[42] Tiffany, McIntyre, and Rotenberg, *Detection of Crime*, 3-4, 12-14.

have increased after *Mapp*, warrantless searches and seizures remained a central practice of policing. And some lower courts would continue to disregard the regulating decision from *Mapp*.

Immediately after the Supreme Court's landmark decision in *Mapp v. Ohio*, in 1961, advocates and activists in New York questioned what *Mapp* would mean for ordinary people and the nation's largest police force.[43] They also expressed concern over the way courts in New York reacted to the new law. The Court of Appeals, the highest court in New York, was slow to comply with the mandate in *Mapp* and adopt the exclusionary rule. In the interim, several criminal defendants appealed to New York's highest tribunal, alleging courts had convicted them based on illegally seized evidence in violation of the Fourth Amendment. As those defendants appealed convictions in the aftermath of *Mapp,* Black Muslims in the Nation of Islam raised similar grievances and fought these police violations in local courts. In the midst of this pushback by NOI, the Court of Appeals decided one of several cases, *People v. O'Neill* (1962), that overturned convictions on the ground that police had either lacked probable cause for an arrest, search or seizure of evidence.[44] Yet NOI members continued to experience the denial of *Mapp's* protection even after the Court of Appeals decision.[45]

Mapp's Impact on Police Practices: New Search Standards

The Supreme Court's ruling in *Mapp* had supposedly resolved all questions around the Fourth Amendment's application to states. And when New York's highest court decided to enforce that decision throughout state courts, lower courts bound the NYPD to follow *Mapp*.

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[43] James Booker, "Many Are Happy Over Court Decision" *New York Amsterdam News*, July 8, 1961, 9.
[44] People v. O'Neill, 11 N.Y.2d 148 (1962), (citing Mapp v. Ohio*,* reasoning that the warrantless search of Lynne O'neill's home in March 1960 was illegal, and police seizure of nude photographs was inadmissible evidence).
[45] Edward E. Curtis, *Black Muslim religion in the Nation of Islam, 1960-1975*. (Chapel Hill: University of North Carolina Press, 2006), pp. 142, 144, 145-46. Vibert L. White, n.d. *Inside the Nation of Islam: a Historical and Personal Testimony by a Black Muslim*. (FL: University Press of Florida,\C2001) See chapter four, 42-61.

Therefore, when police officers entered the Lewis home, the *Mapp* case had regulated police behavior and guaranteed certain protections to the Lewis family. *Mapp* had changed the law in three ways. First, it required police to determine that probable cause had existed for conducting a search and arrest. But the Court in *Mapp* failed to provide a definition for the term "probable cause." Since then, legal advocates have litigated its meaning in courts. According to legal scholar Bruce G. Berner, "No cases, no attempted definitions, define it, they only give a sense of what it is, helping us find it, but never knowing exactly what it is we have found."[46] Nevertheless, he attempts to give a sense of what it is, noting that mathematical concepts are not perfect, but posits the idea that it means something is 50 percent or more probable.[47] It is problematic to use the word "probable" for the legal standard "probable cause" because in practice that phrase generally refers to simple questions: has a crime been committed or was a crime about to take place? To show "probable cause" existed for a search or arrest police must articulate whether it was "more probable than not" that a person committed or was in process of committing crime. Second, prior to trial, the accused gained the right to request a separate proceeding, commonly referred to as a "*Mapp* hearing," where officers testified to the grounds that lead to the arrest and search.[48] Third, in a *Mapp* hearing, criminal judges were bound, under the exclusionary rule, to find evidence obtained without probable cause or a warrant inadmissible in court. However those three changes did not protect NOI members from unlawful police stops, searches or arrests in New York Streets or entries and arrests at Mosques. New York's criminal procedure and rules of evidence provided police officers with an exception around *Mapp*.

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[46] Bruce G. Berner, "Search and Seizure: Status and Methodology," *Valparaiso University Law Review* 8, no. 3 (1974): 494.
[47] Wayne LaFave, "Search and Seizure: The Course of True Law," *University of Illinois Law Forum* 255 (1966): 255; See also, *Carroll v. United States*, 267 U.S. 132, 162 (1925).
[48] "Mapp/Dunaway Hearing" is another common reference in New York Courts.

NYPD Targets NOI: Black Muslims Selling Newspaper, Christmas 1962

Reporters of *Muhammad Speaks* extensively covered a story that involved a police stop and search of two young Muslims on Christmas day, 1962.[49] NYPD officer, Raymond Sullivan stopped Hugh X Morton and Albert X Reese by gunpoint. Both were Black twenty-six-year-old NOI members. Officer Sullivan searched then arrested them for selling *Muhammad Speaks* newspapers on 42nd Street in Times Square, one of the busiest urban centers in the world. Although police routinely stopped, searched and harassed Muslims for selling their newspapers on city streets across the country, never before had such an encounter resulted in state prosecution and an actual trial in a Manhattan criminal court.[50]

On the day of trial, thousands of supporters appeared at the courthouse and several tried jamming into the courtroom.[8] *Muhammad Speaks* reported from the trial as the case unfolded. On the stand, officer Sullivan told the grounds for stopping and ultimately arresting the defendants. In addition to setting the standard for a search, the Mapp case also set the standard for police arrests. It required policemen have probable cause to believe a crime occurred or was about to happen before the officer could make an arrest. To satisfy requirements under *Mapp*, Sullivan alleged that Morton had blocked a subway entrance and bumped a white woman while she exited the subway. Sullivan said he asked Morton and Reese to move but they refused. Consequently, Sullivan attempted to arrest Morton and at that point, Reese began yelling curse words and then attacked Sullivan. Officer Russell was present at the scene of the incident, but off duty and not in uniform. Nevertheless, Russell aided officer Sullivan and helped make the arrests. The attorney for NOI, Edward Jacko, represented the defendants. Jacko, a Black man,

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[49] Joseph Walker, "Justice Mocked At Muslim Trial in New York City," *Muhammad Speaks*, February 4, 1963, 4. NYPL Schomburg Center for Research in Black Culture, Manuscripts, Archives and Rare Books Division.
[50] Walker, "Justice Mocked At Muslim Trial in New York City," 4.

had a successful law firm in the heart of Harlem, cross-examined both police officers. On the witness stand, Jacko's questioning got both officers to admit that neither Morton nor Reese had violated any public ordinance and, at that time, no law had existed to prohibit the sale of religious papers. Officer Russell also revealed that neither of the men had assaulted him. Both Morton and Reese testified, denying that they blocked the subway, bumped anyone, used profanity or struck either officer. An independent eyewitness corroborated their testimony. However, moments later, Judge John M. Murtagh found them guilty of "assault in the third degree" and "disorderly conduct" for selling *Muhammad Speaks* newspapers.[51] He adjourned the case until the following year to determine sentencing.

Following the verdict, Malcolm X asked newspaper and television reporters: "If the Black man can't get justice in New York City, where in this country can he get it?"[52] Malcolm X's rhetorical question used basic terms to capture the limitations of courts when it came to protecting Black people. Audre Lorde theorized, "the master's tools will never dismantle the master's house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change."[53] Malcolm X similarly concluded that laws and justice system of the U.S. could not offer Black communities redress. At the courthouse, supporters quickly turned into demonstrators. African American photographer Gordon Parks, joined the picket line and photographed the protesters carrying black-and-white signs that read in

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[51] Assault in the third degree (ATD) is a misdemeanor that carries a sentence of up to a year imprisonment. To prove ATD, the state must establish an accused caused a victim to suffer serious physical injury that generally involves bruising, swelling or substantial pain. Disorderly Conduct (DC) is not a crime, but a violation. In this case, blocking the subway entrance, refusing to move on or causing another pedestrian alarm, disturbance or inconvenience constitutes DC. Such acts can carry a minimal jail sentence. Convictions for these charges were odd especially because a witness corroborated Morton and Reese's testimony.

[52] Walker, "Justice Mocked."

[53] Audre Lorde, *Sister Outsider: Essays and Speeches* (New York: Ten Speed Press, 1984), 112.

bold, "America is a Police State for the Black Man."[54] Outside the courthouse, a reporter also interviewed one of the defendants, Minister Henry X, who said his conviction was "part of a coldly calculated statewide attempt to create public sentiment against Muslims in New York." The demonstrators went from the courthouse to city hall and then ended in Times Square in a "solemn march." As 1962 came to an end, the character of activism significantly shifted. Change was necessary to meet mounting cases of brutality and discrimination that would follow in 1963.

Police Warrantless Search of Muslim Mosque, New Year's Day 1963

Even after *Mapp*'s prohibition against unreasonable entries and searches, police and state agents invaded Mosques without warrants and made arrests without having probable cause. A few days after the New Year's celebration, an armed police force invaded a Muslim mosque, without a warrant, in clear violation of *Mapp's* ruling. On January 6, 1963, police dashed into an NOI temple with a vicious dog, interrupting religious services in Rochester, New York. Officers claimed to have received "an anonymous telephone complaint about a man with a gun."[55] Instead of searching for the alleged gun, the police took the names and addresses of all members present. Several worshippers expressed "indignation over the unprovoked invasion of their Islamic religious services." Officers beat those members who spoke up in protest. To prevent further escalation, a few members pinned the two officers against a wall. Subsequently, police arrested thirty-four-year-old Goldstein X Small, as well as twenty-three-year-old Donnell X Oliver, charging both with misdemeanors for assault and resisting arrest.

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[54] *See* Gordon Parks marching in photograph, "America is a Police State for the Black Man," New York City Criminal Court Building, 1963. Photo credit: Robert L. Haggins — in New York, NY, https://www.pinterest.com/pin/4433299609488914/.

[55] "Rochester Negroes Unite for Freedom," *Muhammad Speaks*, March 18, 1963, 11. NYPL Schomburg Center for Research in Black Culture, Manuscripts, Archives and Rare Books Division.

A week after the police's first invasion, state employees broke into the same mosque a second time. But this time, local firemen violated the sacred space. The fire department was also bound to follow the Supreme Court's *Mapp* decision prohibiting against warrantless searches, but they avoided the legal requirement for a warrant or probable cause, claiming that their visit was based on a false alarm from another anonymous caller.[56] In early February, a month after the second invasion, a grand jury secretly indicted fifteen NOI followers, accusing them of assault in the third degree, a misdemeanor, and inciting a riot, a felony.[57] Police later arrested those men and the state prosecuted their cases along with Goldstein X and Donnell X before the same Monroe County judge. The seventeen Muslims retained Reuben K. Davis, an esteemed Black attorney, and legal counsel for the NAACP . He charged each client $350 to represent their cases but the defendants could not afford such high attorney fees and their organization could not raise the funds for legal counsel and bail. In protest, the men refused to pay legal counsel, announcing to the court, "since the police used Gestapo tactics to criminally invade our Mosque and unjustly arrest us, let the state pay our court costs."[58]

At the time, the NOI's demand for free legal representation was ahead of the legal precedent, not even the revolutionary decision in *Mapp* had extended criminal defendants the right to an attorney.[59] These were bold requests since no law had ever given indigent people

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[56] The police repeatedly invaded Mosques, searched them without warrants, assaulted the members and arrested NOI members without justification. *Muhammad Speaks* reported on the East Coast about how police had desecrated Mosque No. 25 in Newark, New Jersey, wrecking and firing their guns on December 17, 1965. The Newark attack had come on the heels of a warrantless police search on the West Coast, which had left a Los Angeles mosque in disarray. "Police Desecration of Mosque Should Be Lesson to Integrationists, says Minister," *Muhammad Speaks,* January 7, 1966, 27; see also "Black Community United Against: Wild Police Assault on Muslim Mosque," *Muhammad Speaks*, December 31, 1965, 9. NYPL Schomburg Center for Research in Black Culture, Manuscripts, Archives and Rare Books Division.

[57] "Police Desecration of Mosque," 27; "Black Community United," 9.

[58] "Rochester Negroes Unite for Freedom," 11.

[59] For an in-depth review of NOI's struggles for civil rights *see* Malachi D. Crawford, *Black Muslims and the Law: Civil Liberties from Elijah Muhammad to Muhammad Ali*. (Lanham: Lexington Books, 2015).

constitutional rights to free legal counsel in New York criminal courts. As the seventeen Muslims confronted the system, *Muhammad Speaks* reported on their case and the broader plight facing similarly situated people in the criminal justice system; "Poverty-ridden Negroes, jailed each year by the thousands because they cannot pay for adequate legal defense."[60] A reporter interviewed a prominent legal expert who summarized what justice looked like for those people:

> The poor live in double jeopardy because they are poor and cannot afford the most meager defense for even the smallest crime and because they are Negroes. They were legally victimized even before they went to prison. Thousands are serving sentences for the same crimes that the wealthy are never even arrested for.[61]

More criminal cases appeared in federal courts after the Supreme Court's *Mapp* decision. Erwin Griswold, a Constitutional expert, suggests that legal practitioners took advantage of an opportunity to forum shop, rather than litigate Fourth Amendment issues in local state courts, they chose to resolve them in federal courts. According to Griswold, *Mapp* had brought "a flood of search and seizure cases" to the Supreme Court.[62] Previously, the Supreme Court had typically accepted commercial cases with questions involving contracts, property, corporations or general business. Griswold theorizes the Court's shift toward accepting more criminal cases was in part because "These are very human cases, involving not only personal rights but also setting standards for the kind of society in which we live. None of the cases involves a 'technicality" or a narrow question of the construction of a statute . . . what the Court is doing, in large part, is making a judgment as to the scope of the word "unreasonable" as it applies to

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[60] "For Most Minor Offenses: Negroes Jailed for Poverty See New Hope in 'Federal Defender' Plan," *Muhammad Speaks*, January 31, 1963, 18. NYPL Schomburg Center for Research in Black Culture, Manuscripts, Archives and Rare Books Division.

[61] "For Most Minor Offenses: Negroes Jailed for Poverty," 18.

[62] Erwin N. Griswold, *Search and Seizure: A Dilemma of the Supreme Court* (Lincoln: Nebraska Press, 1975), 38-39.

search and seizure in the Fourth Amendment"[63] The NOI press suggests federal courts accepted more state criminal cases because poor defendants could not afford adequate legal representation.

A prominent African American attorney, and veteran public defender from Chicago, told *Muhammad Speaks* that a push for federal legislation to compensate criminal defense attorneys "has sharply increased, bringing with it new problems that were formerly those of the state."[64] Soon federal courts began taking state cases with defendants who needed adequate legal representation. Attorney General Robert Kennedy also noted that "nearly one third of the accused in the 34,008 criminal cases tried in federal courts last year could not afford counsel." As head prosecutor for the country, Kennedy determined the large number was "not a problem of charity, but of justice."[65]

Simultaneous with NOI's protest against criminal defense fees, twenty-three states were backing a new proposal before Congress to establish "Defenders for the Undefended," to provide free legal assistance to poor defendants facing criminal charges. Private attorneys could also request compensation based on provisions in the legislation. Royal Spurlock, another prominent Black defense attorney, told *Muhammad Speaks* he welcomed that idea. In addition to paying for an attorney's professional training, adequate criminal defense often involved other costly services. According to Spurlock, the federal law "would make possible criminal investigation on behalf of defendants. This is one of the most costly phases of defense."[66] But before Congress could pass this law, the protest lodged by the Muslim defendants in the New York City criminal

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[63]Griswold, 38-39.
[64] "For Most Minor Offenses: Negroe Jailed for Poverty See New Hope in 'Federal Defender' Plan," *Muhammad Speaks*, January 31, 1963, 18.
[65]"For Most Minor Offenses: Negroe Jailed for Poverty See New Hope in 'Federal Defender' Plan," 18.
[66] "For Most Minor Offenses: Negroe Jailed for Poverty See New Hope in 'Federal Defender' Plan," 18

court was successful. Judge Harry L. Rosenthal kept private attorneys Reuben K. Davis and S. Gerald Davison as court appointed counsels, which obligated the state to pay. Then he set bail at $500 for each defendant. The judge sent Goldstein X and Donnell X's misdemeanor case up to the grand jury, presumably to consider felony charges, thus elevating the case by January 30. The Court scheduled the other fifteen defendants for trial in late March. All seventeen Muslims posted the bail and were free as they awaited trial. NOI activism occured in New York City and other cities where large Black and Muslim populations lived in across the state.

Another Police Search and Beating at Mosque, Rochester 1963

Mapp offered little protection against Fourth Amendment violations. Black organizations, in this case the NOI, had to play an outsized role in advocating for rights in criminal court for Black citizens. Malcolm X, serving as the national representative of Elijah Muhammad, immediately flew to Rochester to investigate another state invasion of a Mosque.[67] At the time, the community could not get answers or justice. The police department would not release the names of officers accused of misconduct and ignored complaints. However, Malcolm X was determined to get answers. "After thoroughly investigating the situation," he told *Muhammad Speaks*, "the police were actually guilty of invading premises where religious services were being held."[68] He likened it to what "the Gestapo did to Jewish synagogues in Nazi Germany."[69] *Muhammad Speaks* published the full names of the officers involved. It turned out, officers Anthony D'Angelo and John Hunt, both white men, knocked aside the mosque's doorman, who tried explaining that religious services were in progress. Once inside, Goldstein X Small and Donnell X Oliver said officers used a "snarling dog" to breakup services

[67] "Rochester Negroes Unite for Freedom," 11.
[68] "Rochester: Cop Newest Target In Harassment Plot" *Muhammad Speaks* February 4, 1963, p. 5.
[69] "Negro Jailed for Poverty," 18.

and called in nine additional officers to search and question the members. These witnesses also reported that wanton harassment and brutality continued at the station house. During questioning an officer punched them in the face and threatened "next time I will go in with my gun blazin."[70] When Malcolm X investigated the second Mosque invasion, he learned that firemen had assaulted Muslims too. Members recounted for Malcolm X that local firemen turned high powered hoses on members who had gathered at the mosque. The mainstream press had neglected to report any details of this state violence against Black Muslims. Ultimately, *Muhammad Speaks* reported everything that Malcolm X discovered and the newspaper condemned the state for creating "trumped up charges" against Muslims.[71]

In accordance with the law that protected rights to public assembly, Malcolm X filed for permits to register public protest in Rochester as well as New York City. He called for a united front to fight against police brutality and flagrant violations of civil, human and religious rights of Black people. In Rochester, for example, at least 800 citizens rallied to protest the mounting police brutality, wanton harassment and arrests of Black people. "Police brutality has become a byword," Malcolm X declared before the crowd, "in every Negro community."[72] Other speakers addressed the mass of people of which 95 percent were Black. A Black businesswoman charged, "Rochester has become the Mississippi of New York State. America preaches democracy but practices hypocrisy."[73] Her analogy signified that the racial terror and injustice which occurred in the South equally happened in New York. In addition, she succinctly captured the reality lived by 20 million Black people in the United States, which meant freedoms guaranteed by the Bill of Rights were merely rhetorical. She did not stand in anger but rather a righteous

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[70] "Negro Jailed for Poverty," 18.
[71] "Negro Jailed for Poverty," 18.
[72] "Rochester Negroes Unite for Freedom," 11.
[73] "Rochester Negroes Unite for Freedom," 11.

discontent, as had several Black women before her stood, demanding activism of equal measure for civil rights in the North.[74] NAACP branch President, Reverend Wendell Phillips reminded the crowd of America's roots, saying "Though your ancestors came across on the Mayflower and mine on a slave ship, we are now all in the same boat." Phillips' comments implied faith in America's democracy, suggesting people's mere presence in America, despite their origins, made them equal with inalienable rights. Despite the large turnout and overall message, news presence was minimum and subsequent coverage was even more sparse. Malcolm X considered the mainstream media's absence intentional and nefarious. It was comparable to Hitler's efforts in Natzi Germany "to muzzle the press so that when they gassed the Jews, no one knew."[75] He warned NOI protesters that "the same thing [could] happen here." However, *Muhammad Speaks* reported on the event and informed readers the gathering was "the most spectacular display of Negro unity ever witnessed in Rochester." The rally sponsorship list also conveyed unity and political diversity. It included the local NAACP, Congress of Racial Equality (CORE) and the Monroe County Non-Partisan Political League. Considering the diversity of speakers, styles and experiences of the people present on that day, they were unanimous at reaching one conclusion: "traditional means of protesting injustice had been exhausted."

Back in New York City, a mass demonstration occupied Rockefeller Center where more than 500 Harlemites braved bone-chilling winds to march. They carried signs that stated "Liberty or Death," protesting the persecution of NOI followers and police brutality there and throughout New York State. The marchers branded New York Governor Nelson A. Rockefeller and local Senator Kenneth Keating, who represented Rochester district "hypocrites" for posing

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[74] Evelyn B. Higginbotham, *Righteous Discontent: the Women's Movement in the Black Baptist Church, 1880-1920*. (Cambridge: Harvard University Press, 2003).
[75] "Rochester Negroes Unite for Freedom," 11.

as "liberals while oppressing Black people in New York."[76] Correspondents at *Muhammad Speaks* had previously reported that Senator Keating was "the only New York senator to attack the Honorable Elijah Muhammad in congress."[77]

A few days later, a Rochester court held trial for the fifteen Muslims, who police had arrested following the mosque raid. In late March 1963, the men stood trial before an all-White jury. Surprisingly, the jury hung because they could not reach a verdict of innocence or guilt. And under contentious circumstances, the District Attorney's office decided to retry this infamous case. Over the course of nine months, the state had to try the men a total of three times. Each time, an all-white jury hung forcing judges to declare mistrials.

In the aftermath of the last mistrial, the state pursued two additional Muslims whose names were given to a grand jury. The state also added a misdemeanor charge of unlawful assembly to the list of crimes charged for indictment. The grand jury found there was sufficient evidence to find the group of men guilty and issued a revised indictment. The District Attorney decided to try the Muslims for a fourth time with this new charge – one that was easier for the prosecutor to prove and for the jury to convict.

Since none of the trial courts had previously imposed *Mapp*'s requirement that police have a warrant before entering the Mosques, or show probable cause for the arrests, the members were vulnerable to jury convictions at latest retrial. NOI considered the fourth trial, a frame-up and travesty of justice like the trials preceding it. *Muhammad Speaks* deemed this fourth round of prosecution, "the Rochester Railroad."[78] Over the course of 1963, the newspaper reported on the warrantless police entry into their mosque arguing that it was a "desecration" and called out

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[76] "Rochester Negroes Unite for Freedom," 11.
[77] "Rochester Cops' Newest Target in Harassment Plot," *Muhammad Speaks,* February 4, 1963, 5.
[78] "Rochester Railroad: Infamous 'Frame-UP Trial' Slated for 4th Hearing," *Muhammad Speaks*, November 22, 1963, 18.

police officials' claims about searching for a gunman, a lie. NOI used the opportunity to educate the public that "Muslims do not carry arms and they do not permit others to enter their Mosques carrying weapons."[79] While *Muhammad Speaks* covered various unreasonable searches, false arrests and punitive prosecutions around the United States, the newspaper considered the ones in New York part of "a coldly calculated statewide plan to create public sentiment against Muslims in order to influence judges' decisions in Muslim trials."[80] NOI's press told readers that the K-9 episode and the invasion by the firemen were a "stepped up program of Muslim harassment."[81] NOI members believed they were victims of religious discrimination and looked for every opportunity to establish their case before public opinion. According to leadership at the NOI, the police targeting, unreasonable searches and criminal prosecutions were all predicated on the fact that its membership belonged to an unorthodox religious movement that had a strong critique of white supremacy.

NOI and Collaborations

Though a separatist organization, NOI leadership embraced collaboration with others in public protests, attracting both secular and religious allies. They also used artists and writers to shape public opinion and spur further support. Through these efforts, the NOI gained the support of various faith-based institutions that stood by their side to fight against the state's mistreatment of NOI members despite their religious differences. Jewish, Catholic and Protestant religious leaders were shocked at the District Attorney's relentless persecution of Muslims and demanded that the office dismiss the charges instead of continuing with a fourth trial. In an unprecedented display of support, the Catholic Interracial Council, the Jewish Community Council Department

[79] "Rochester Railroad: Infamous 'Frame-UP Trial,'" 18,
[80] Walker, "Justice Mocked."
[81] "Rochester Cops' Newest Target," 5.

and the Rochester Area Council of Churches wrote an open letter to the District Attorney John C. Little, Jr.[82] "This continued prosecution is *SO* unusual," declared the counsel of religious leaders, "from your over 20 years of experience in Monroe County District Attorney's Office only one case [that involved first degree murder] would be precedent for such a third trial."[83] Furthermore, the multi-denominational group found "this apparently unprecedented re-indictment" was not based on a pressing need or the seriousness of the underlying indictment, instead it simply stood "to make these defendants stand trial for the same offense." The letter concluded, "We find nothing unique about this case, other than the fact that the defendants are Negroes and . . . were members of a different religious group." The Rochester branch of the NAACP echoed those sentiments in a similar letter. They determined that the Muslims were "being tried a fourth time not so much for the offense they allegedly committed [but] for the unorthodoxy of their religious beliefs."[84] However, the District Attorney's Office defended its position and maintained its authority in refusing to admit any biased motives behind pursuing the case so many times. Yet, amidst the public protest and diverse cries of support for Muslims in trial, the Assistant District Attorney assigned to the case resigned.[85]

In Albany, state senator James L. Watson advocated to protect the civil rights of the NOI. Watson, an African American, was a Harlem native. He grew up, married and had children in Harlem and now represented the Harlem district in the New York State Legislature. The forty-year-old senator witnessed the NOI grow within the community and did not consider NOI followers as threats. While NOI activists protested racial and religious police targeting on the

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[82] "Persecution in Rochester: Catholics, Protestants, Jews Protest 4th Trial!," *Muhammad Speaks*, December 6, 1963, 2.
[83] "Persecution in Rochester," 2.
[84] "Persecution in Rochester," 2.
[85] "Persecution in Rochester," 2.

ground, Senator Watson introduced a bill to guarantee "equality of religious freedom and rights to all faiths," which covered followers of Elijah Muhammad serving time in state correctional facilities.[86] In an interview with *Muhammad Speaks,* Watson said "There is no evidence that the Muslim faith is bad or detrimental faith." The religious group owed much of its popularity to Malcolm X. Large segments of the working class and a growing number of middle class Black people identified with the protests, ideology and tactics advanced by Malcolm X. While Malcolm X upset many traditional Black "leaders," who advocated a "milder" approach to the solve Black people's many problems, he was not the cause for senator Watson's position. The Senator based his belief on recidivism rates, which told of NOI's positive impact on incarcerated or formerly incarcerated members. "The amount of recidivism among inmates who are converted to the Muslim faith is far less than the amount of recidivism of other faiths."[87] But Watson was not alone, other prominent Black politicians recognized the political power and social influence of NOI, as well as their legitimate claims against state actors for violating civil rights.

NOI Joins Forces in Public Protest: Human Rights Rally

In a bold act of solidarity, U.S. Congressman, Adam Clayton Powell, Jr., joined NOI activists. Powell tirelessly fought at the federal level to end racial discrimination, inequality, police abuse, and unfairness within the criminal justice system. The Harlem Democrat's position shocked several people who supported older and traditional leadership of Civil Rights movements. In April 1963, *Muhammad Speaks* covered a major Human Rights Rally held in Harlem at 7th Avenue and 125th Street. It featured an article with the dramatic headline,

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[86] Joseph Walker, "How a New York Senator Sees Muslims, Rockefeller, Shelters" *Muhammad Speaks*, April 22, 1963, 14.
[87] Walker, "How a New York Senator Sees Muslims," 14.

"Congressman Powell Says: OUR FREEDOM CAN'T WAIT!" on its cover page.[88] On the following page, a photograph captured Powell, Malcolm X and former Manhattan Borough president, Hulan Jack seated together, talking and smiling.[89] Other politicians such as attorney Percy Sutton, Senator James L. Watson, and several Black and Puerto Rican Assemblymen spoke at the outdoor rally. A secret division of the NYPD observed and documented the human rights crusade rally and reported approximately 2,500 persons in attendance.[90]

Comedian Dick Gregory made his presence felt at the rally on human rights. Opening the event, his introduction added elements of popular culture and performativity to protest. Gregory said, "So you're leaving the South and coming North because they are not lynching us up here. They got a better way. They give you a job for a dollar an hour and starve you to death."[91] The comedian illustrated the vastness of this human rights rally, which incorporated struggles against all modes of oppression including racial policing, brutality and economic discrimination. His words dismantled imagined geographic boundaries of Jim Crow violence. Gregory collapsed distinctions between state sanctioned racial terror lynchings and capitalism's Darwinistic economic policies. He implicated the power structure's racist impact in both situations. Despite Black migration from the South to the North, economic structures violently oppressed Black people everywhere. Well before intersectionality existed as a term, Gregory found words to call the audience's attention to the connectedness of race and social class as simultaneous modes of oppression. Overall, the rally connected equality and anti-capitalist movements to the

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[88] "Congressman Powell Says: Our Freedom Can't Wait!," *Muhammad Speaks*, April 15, 1963, 1.
[89] "Congressman Powell Says: Our Freedom Can't Wait!," 2.
[90] *See* Bureau of Special Services Report (undated) with attached clipping of article, "Powell: Boycott NAACP Until White Leaders Leave," *Brooklyn Eagle*, April 1963 Arnie Goldwag Brooklyn CORE Collection ARC 002 Box 8 Folder 5 "[Police Reports] Harlem Parents Committee" Brooklyn Historical Society. [hereinafter B.S.S Report with clipping]
[91] "Congressman Powell Says: Our Freedom Can't Wait!," 2.

anti-brutality movement. The police state in New York City was about policy that monitored and controlled police people. It was also linked to economic policy because when police enforced laws, economies at home and internationally were at play.

When Malcolm X addressed the audience he spoke plainly, announcing a need to change tactics. "Black people in this country have caught hell long enough," he said.[92] "You do not get anything by being polite. The only time you get something done is when you let the white man know you are fed up. It is time you wake up and stand up."[93] People across the country were doing just that by refusing to be passive and taking bold stances against injustice, racism and Jim Crow. Sociologist, Morris proves churches worked with activists, members of the Southern Christian Leadership Conference (SCLC), Student Nonviolent Coordinating Committee (SNCC) and Freedom Riders to travel deep throughout the rural South to fight segregation, disenfranchisement and systemic Jim Crow practices in the criminal justice system.[94] Historian Biondi's work, *To Stand and Fight,* locates the roots of this activism in NYC in the 1940s and shows that Black activists had long theorized defendants' rights as part of civil rights. And Thomas Sugrue chronicles a nationwide context for upsurge in Black protest.[95] Meanwhile, set within this context of national struggles, in New York City, protests over employment discrimination led masses of people to picket the construction site for a new Harlem hospital in 1963. At that time, it was rumored that some negotiators, inspired by Malcolm X and the NOI,

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[92] "Congressman Powell Says: Our Freedom Can't Wait!," 2.
[93] "Congressman Powell Says: Our Freedom Can't Wait!," 2.
[94] Aldon D. Morris, *The Origins of the Civil Rights Movement Black Communities Organizing for Change*. (New York: The Free Press, 1986); Martha Biondi, *To Stand and Fight the Struggle for Civil Rights in Postwar New York City*. (Cambridge: Harvard University Press, 2006); Matthew C. Whitaker, *Race Work: the Rise of Civil Rights in the Urban West*. (Lincoln: Univ of Nebraska, 2007); Later chapters three and four discuss several activists in New York City who participants in and had received training from earlier protest demonstrations in the south that were organized by the Freedom Riders, SNCC and SCLC.
[95] Thomas J. Sugrue, *Sweet Land of Liberty: the Forgotten Struggle for Civil Rights in the North*. (New York: Random House, 2009).

used the threat of having Black Muslims join picket lines as leverage to extract concessions from city officials.[96]

As more Black people and their allies grew tired of the *status quo*, the time had come for their tactics to shift as well. Consequently, demonstrators engaged a new repertoire by displaying more performative acts of discontent. They spoke volumes through metaphors such as effigies, double entendre, catchy chants, Cold War rhetoric and protest songs. Taking action against discrimination thus took on new performative gestures. With a population of over 600,000 at the time, Black citizens of Philadelphia gathered in frustration over police brutality and persecution. NAACP Director Cecil B. Moore led a march that took the form of a "mock burial," where citizens carried placards that read: "Here Lies Jim Crow: Buried By Phila. NAACP Funeral Director-Cecil B. Moore."[97] Several artists saw it as a moral responsibility to help boost support for struggle against injustice and civil rights campaigns. *Muhammad Speaks* printed visual representations of these types of staged protest performances. Reporting on April 1963 Human Rights rally, the newspaper included a photograph of Dick Gregory and Minister James X, of the NOI Mosque in Newark, NJ, on the dais flanked by a hanging effigy of Mississippi Governor Ross Robert Barnett, an ardent segregationist.[98] Six months prior, Governor Barnett made national news in 1962 when he prevented James H. Meredith, a twenty-nine-year-old Black Air Force veteran, from enrolling at the University of Mississippi in defiance of a federal court order. At the Harlem rally, however, the community created a sculpted and crudely fabricated image of Barnett to communicate a message and draw upon

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[96] Sylvester Leaks, "What Sparked Big Protest in New York?" *Muhammad Speaks*, July 5, 1963, 14.
[97] "Another Premature Funeral," 2.
[98] Unknown Photographer, Photograph with caption: "Dick Gregory (left) on speakers platform at Human Rights rally, is flanked by Muslim Minister James X of Newark, N.J. Hanging in effigy (top) is Mississippi Governor Ross Barnett," *Muhammad Speaks*, April 15, 1963, 3.

collective memory. The hanging in effigy symbolized community-wide discontent. Literary scholar Joseph Roach theorizes about the cultural significance and performance aspect of effigy. The effigy is inherently performative and a phenomenon of collective memory. Roach defines it as:

> contrivance that enables the processes regulating performance--kinesthetic imagination, vortices of behavior, and displaced transmission--to produce memory through surrogation. Moreover, the effigy operates in all the cultural constructions of events and institutions that . . . [are] central to circum-Atlantic memory: death and burials, violence and sacrifices, commodification and auctions, laws and (dis)obedience, origins and segregation.[99]

Roach further describes effigy as performance because "it produces something" and "evokes an absence" to body something forth; it also fills by means of surrogation. At the rally in Harlem, activists used effigy as a performative tool by creating a stand-in for an absent enemy. Barnett hanging in effigy, the object substituting for the absent governor, mirrored the country's legacy of Black lynching and symbolized the direction protest threatened. It was a premonition for the public's growing support for NOI's militant stance of self-defense.

According to Malcolm X, New York City stood at the epicenter of the fight for Black justice in America."[100] By 1940, the end of the First Great Migration, over one million Black people had left the South, fleeing poverty, racism, disenfranchisement, white violence and lynching terrorism, and migrated north to search for safety, employment, economic opportunity, voting rights and other opportunities. New York City became home of 66 percent of the first wave of migrants. After the Second Great Migration of World War II era (between 1940 and

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[99]Joseph Roach, *Cities of the Dead: Circum-Atlantic Performance* (New York: Columbia University Press, 1996), 36.

[100] Joseph Walker, "Justice Mocked At Muslim Trial in New York City," *Muhammad Speaks*, February 4, 1963, 4. NYPL Schomburg Center for Research in Black Culture, Manuscripts, Archives and Rare Books Division.

1970), the Black population grew exponentially greater in New York City.[101] As a result of housing scarcity and segregation tensions, Black people settled in Harlem, a formerly all-white neighborhood in Manhattan, and Bedford Stuyvesant in Brooklyn. During the postwar era a vigorous call for civil rights originated from these Black communities and so did an early activism for Fourth Amendment rights.[102] In the late 1940s, activists and advocates from Bedford Stuyvesant called for local legislation to protect citizens for illegal search and seizure.[103] Scholar Kenneth B. Clark had noted, while the Nation's Black population had doubled between 1910 and 1960, in New York City it had "multiplied ten times over."[104] By 1960, over one million Black people lived in New York City.[105] Thus this large Black population remained vulnerable to unreasonable searches, illegal arrests, brutality and unjust prosecutions.

When in 1961 the Supreme Court decided *Mapp*, guaranteeing all citizens Fourth Amendment protection from warrantless or "unreasonable" search and seizure and arrests lacking probable cause, Black New Yorkers expected change, but these struggles never completely ended. During the first half of the 1960s, members of the NOI complained that the NYPD and state courts had singled them out as targets for illegal searches, invasions of their Mosques and brutality. Courts and police flouted Mapp, leaving them to find alternative

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[101] The Great Migration, 1910-1970, United States Census Bureau. https://www.census.gov/dataviz/visualizations/020/; Nicholas Lemann, *The Promised Land The Great Black Migration and How It Changed America*. (Paw Prints, 2008).

[102] Biondi, 15, 287.

[103] For many years, Justice Frank Oliver of the Court of Special Sessions in Kings County (Brooklyn) New York spearheaded a drive for legislation against illegal search and seizure, seeking to conform state law to federal law that had provided, "no evidence whatsoever, obtained as the result of illegal search and seizure, can be introduced into evidence [during] the prosecution of any case in the courts." He collaborated with several civil activists in Bedford Stuyvesant and a list of prominent Brooklynites including James Powers, President of the Brooklyn branch of the NAACP, who lobbied the New York State Senate for a resolution. "Urge Support for Illegal Search and Seizure Bill" *New York Amsterdam News* March 5, 1949, B1 17.

[104] Kenneth B. Clark, *Dark Ghetto: Dilemmas of Social Power* (Middleton: Wesleyan University Press, 1989), 23, citing E. Franklin Frazier, *Condition of Negroes in American Cities.*

[105] In New York City, Black populations totaled, 1,087,931, 14 percent of the City's population. U.S. Census of Population, 1960; Clark discussion, 24-25.

recourse.[106] Consequently, leaders of NOI resisted through its press, and with protest.

NOI and coalition protests applied pressure in courts, leading some to enforce defendant's rights. In criminal courts, NOI members demanded trials, refusing to plead guilty, even if it risked harsher sentences. NOI members also demanded state funds for an attorney, although the state did not provide free representation for criminal defendants at the time. Their push succeeded, and occured before the Supreme Court ruled that states are required under the Sixth Amendment to the U.S. Constitution to provide defense attorneys to criminal defendants if they cannot afford one.[107]

Conclusion

The first time Malcolm X appeared on the scene of public protest, he advocated a dignified non-violent demonstration against police officers stop and search that ended in New York City's most violent precinct. At the same time, Dollree Mapp, a woman of color, was battling against a violent police encounter and illegal search in Ohio. Eventually in 1961 the Supreme Court decided *Mapp v. Ohio*, promising to restrain police powers, end unreasonable searches, and guarantee citizens more rights in criminal courts. However, even after this landmark decision, Black communities continued to experience serious problems with law enforcement and even considered New York a police state.

While NOI was an "outsider" in terms of orthodox religion, other religious institutions united to offer their support. A diverse group of religious leaders viewed police searches, mass

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[106] In the early 1960s, NYPD offers often targeted NOI members for unreasonable searches, including warrantless searches of religious sites, and brutality. Between 1960 and 1962, New York City paid more than one million dollars each year to settle police brutality cases. Louis E. Lomax, *The Negro Revolt*. (New York: Perennial Library, 1971), 59-60; While during this early post-*Mapp* period, New Yorkers could make complaints against police misconduct, critics found the police review process inadequate and not an impartial venue. Later the Patrolmen's Benevolent Association successfully defeated proposals for a civilian lead review board, despite strong support from civil rights groups and leading politicians. Charles Brecher, *Power Failure: New York City Politics and Policy Since 1960*. (New York: Oxford Univ. Press,1993) p. 8.

[107] Gideon v. Wainwright, 372 U.S. 335 (1963).

arrests and state prosecutions of Black Muslims as violations of civil rights and injustices. For they too had struggled for civil rights against a common enemy and opposed racist policing. To that end, they forged a community in the crucibles of difference. "Without community there is no liberation," feminist and activist Lorde once explained, "But community must not mean a shedding of our differences, nor the pathetic pretense that these differences do not exist."[108] And although NOI had accomplished much while being "outsiders" and had learned to stand alone, unpopular and sometimes reviled, its leadership welcomed the public support. Collectively, they fought the mounting police state.

New York's Black Muslims and allies refused to be voiceless. Early activism took the form of nonviolent civil disobedience, solemn demonstrations, and passive resistance. Nevertheless, such protest was risky for participants. Police retaliation was always an immediate concern during demonstrations but, overall, state responses to protest put America's democracy in danger and exposed hypocrisy. Law enforcement officials often denied New York residents freedom of assembly – freedom guaranteed by the Bill of Rights to all of Americans, including the 20 million Black citizens. Police had generally treated Black people as socially deviant and highly criminal, but to treat the Black community's public assembly as criminal became a problem in state courts. One civil rights leader, Esther Kusic--a Black woman--told the NOI press that by frequently arresting civil rights protesters, the police had created "a mass of hostages to be used to maintain order in the Negro community."[109] Since police abuse, injustice and discrimination was commonplace and overlapping at times, so too was community protests. Many of the same people joined various picket lines and demonstrations that ignited around New York City. Thus police made arrests of the same people "more than once" which resulted in

[108] Lorde, *Sister Outsider*, 112.
[109] "Says Masses in Brooklyn Were Betrayed by Leaders," *Muhammad Speaks*, October 25, 1963, 23.

criminal court cases, that the courts repeatedly "postponed" causing collateral consequences. "Many have lost their jobs," Kusic further explained, "because of so many days off for court appearances." Lastly, she demanded "amnesty for those arrested" before leaders bargained with the state for concessions. Meanwhile NOI members who were arrested by police stood up and protested in courts. They refused to pay attorney fees while taking their cases to trial; they showed that the White police state had a monopoly on violence, appropriated social deviance and was the real criminal.

The NOI used *Muhammad Speaks* as an outlet for resistance. First, it was a tool for social legitimacy, later it became a nationally circulated newspaper that represented radical protest through journalism. It offered activists and activist-journalists an alternative medium and public platform. Professional reporters and special correspondents routinely wrote articles to expose institutional racism, catalogued state imposed and sanctioned violence, and opened up public discourse around religious targeting and brutal policing which included trying NOI members based on "trumped up charges" in the criminal justice system. While accounts of police violence and harassment were not as prevalent in mainstream press, *Muhammad Speaks* covered it and more. It provided the Black community with a venue for action by regularly citing laws, statistics and scientific findings to hold the government accountable.

As radical media, the press provided an extremely democratic form of communication. According to media scholarship, radical journalism offered people who were normally denied access to the mainstream media an opportunity to speak on issues that concerned them and their community.[110] *Muhammad Speaks* represented a non-dominant religious tradition of the western world, a narrative beyond the Judeo-Christian tradition. The NOI had edited the newspaper to

[110] Chris Atton, "News Cultures and New Social Movements: Radical Journalism and the Mainstream Media," *Journalism Studies* 3, 2002, no. 4 (2010).

emphasize content that exceeded mainstream media coverage of Black communities. Occasionally, the newspaper transcribed portions of police and witness testimonies from cases and trials in criminal and civil courts. On a biweekly basis, correspondents and reporters at *Muhammad Speaks* demonstrated how criminal injustice was an equalizing experience, one in which all African Americans shared a linked fate when dealing with police encounters and the legal system.

CHAPTER FOUR

CORE INVESTIGATIVE ACTIVISM: RESISTING FOURTH VIOLATIONS AND NYPD BRUTALITY (1963)

New York City Police Department (NYPD) blatantly violated Fourth Amendment rights, despite the Supreme Court's landmark decision in *Mapp v. Ohio*.[1] During the early 1960s, New Yorkers experienced numerous arbitrary police encounters, unreasonable searches behind closed doors, in private homes and at their businesses. In the previous chapters, I revealed how law enforcement and state agents routinely targeted socially marginalized people based on race and religious affiliation, subjecting them to harassing searches, illegal seizures, brutal treatment and unjust arrests in the urban north, but I also showed the various ways citizens fought back, using the courts, the radical Black press and public protest. This chapter analyzes police encounters with people in 1963, two years after *Mapp*; that year alone provides a quotidian window into police violations of Fourth Amendment rights, and conveys the physical stakes when NYPD barged through doors and encountered Black, Puerto Rican, middle-class and poor residents of New York City. In this chapter I shift the focus to efforts of two major civil rights organizations to defend the rights of Black New Yorkers who found themselves in police custody. Exploring the role of civil rights organizations in post-*Mapp* struggles for criminal procedure rights in New York City, the central questions are: Two years after Mapp, what effect did the case have on police search practices? What were the physical stakes when police violated search and seizure rights? Did Congress of Racial Equality (CORE) use the Supreme Court decision in *Mapp v*

[1] Mapp v. Ohio, 367 U.S. 643 (1961).

Ohio to advocate for people?[2] How did Brooklyn CORE's leadership, focusing on spokesman Arnold Goldwag, collect evidence to investigate police violations and violence? In addition to employing non-violent demonstration tactics, what other tools did CORE members develop to fight social death?[3] The chapter also examines CORE meetings with district attorneys. These were critical spaces and opportunities to demand corrective and punitive state action, but also collect information. With the Brooklyn chapter of CORE, a major national civil rights organization, Goldwag used writing as a protest tool, exposing victims' stories in the press, and sending telegrams and letters to Governor Nelson Rockefeller, the mayor and the police commissioner.

Despite finding little or no coverage of these incidents in the Black and mainstream press, and no files in New York criminal courts, I draw from critical historical methodology to explore their "popular memory" and take a bottom-up approach to understand the experiences of victims.[4] Further, I analyze these police contacts to expose the different methodologies that NYPD officers employed to interpret people's actions at the time. These examples have historic value because they illustrate the intersections of Black life and criminal justice, particularly the

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[2] Congress of Racial Equality (CORE) was founded in 1941 as an outgrowth of Fellowship of Reconciliation (FOR), an interracial, pacifist, Quaker-led group. For a brief history of CORE, see Alan B. Anderson and George W. Pickering, *Confronting the Color Line: The Broken Promise of the Civil Rights Movement in Chicago*. (Athens: The University of Georgia Press, 1986); August Meier and Elliott Rudwick, *CORE; A Study in the Civil Rights Movement, 1942–1968* (New York: Oxford University Press, 1973); James R. Ralph, Jr., *Northern Protest: Martin Luther King, Jr., Chicago, and the Civil Rights Movement* (Cambridge: Massachusetts, 1993); Brian Purnell, *Fighting Jim Crow in the County of Kings: The Congress of Racial Equality in Brooklyn (Civil Rights and Struggle)* (Kentucky: University Press of Kentucky, 2015), 129-169, 133-34.

[3] This chapter is influenced by afro-pessimism, particularly the scholarship of Orlando Patterson, who theorizes that social death results for Black people because the state "ritually incorporates [them] as the permanent enemy on the inside." Orlando Patterson, *Slavery & Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1985), 39.

[4] The concept of "popular memory," is a critical historical method that legal scholar Kendall Thomas has conceptualized to recover the social, cultural and ideological struggles that were suppressed by dominant institutions and legal scholarship. According to Thomas, "popular memory" is not a revisionist history, but offers a "remembrance" of situations in the form of a cultural history of the political events that surrounded them. Kendall Thomas, "Rouge Et Noir Reread" *Critical Race Theory: The Key Writings That Formed the Movement* Ed. Kimberlé Crenshaw, Neil Gotanda; Gary Peller [et Al.]. (New York: The New Press, 1995): 466.

diverse ways in which policemen criminalized individuals, interpreted their indignance or challenges to authority as transgressions, evaluating simple gestures as dangerous movements that warranted police use of excessive or deadly force. I argue, a state logic of violence and captivity were the underpinnings of law enforcement Fourth Amendment violations post-*Mapp*. Several police invasions had fatal consequences, leaving communities to mourn the loss of loved ones, and experience social death.

In addition, these narratives expand existing historical viewpoints on civil rights activism. They have pedagogical value for understanding an underexplored history of civil rights struggles against police illegal searches after the Supreme Court expanded criminal defendant civil liberties in *Mapp*.[5] In New York, police brutality and unreasonable search and seizure practices created context for members of Black communities to express resilience, innovate ways to fight injustice, and expand the boundaries of social life for legacies. Citizens stood up against the police despite the risk of brutality and deadly force. Standing up sometimes meant physically fighting back in self-defense and other times running away. Moreover, for people who survived and complained about NYPD misconduct, police often retaliated by making a false arrest and orchestrating charges for later criminal prosecution in courts. In response to state violations of Fourth Amendment guarantees, citizens sought the assistance of traditional civil rights organizations as well as some grassroots community-based groups. During the early half of the 1960s, the NAACP, the largest and oldest civil rights organization in the country,

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[5] Aldon Morris, *The Origins of the Civil Rights Movement: Black Communities Organizing for Change.* (New York: Free Press, 1984); Martha Biondi, *To Stand and Fight: the Struggle for Civil Rights in Postwar New York City* (Cambridge:Harvard University Press, 2003); Marilynn S. Johnson, *Street Justice: A History of Police Violence in New York City* (Boston: Beacon Press, 2004); Thomas Sugrue, *Sweet Land of Liberty: the Forgotten Struggle for Civil Rights in the North*. (New York: Random House, 2009).

advocated for several victims.[6] At times, Brooklyn branch leaders of the NAACP offered to defend people who were arrested following an arbitrary encounter or illegal search and prosecuted in local courts.[7] New Yorkers also took their concerns to Congress of Racial Equality (CORE).[8] CORE used Mohandas Gandhi's non-violent principles as protest tactics against discrimination, segregation and racism. In New York, however, certain CORE chapters deployed more radical activism against the mounting police state, unreasonable searches and police violence.[9]

Brooklyn's CORE chapter took an innovative approach against unjust police practices, brutality and Jim Crow inequality within the criminal justice system. According to historian Brian Purnell, CORE's Brooklyn chapter was the most active chapter in the North.[10] From 1960 to 1965, "they took on the city at its highest levels" by fighting against racial discrimination in predominantly Black neighborhoods.[11] Purnell documents the leadership's frustration, which grew towards city officials and government leaders who gave them the runaround. He also

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[6] W.E.B. DuBois and Ida B. Wells, along with other Black activists and Northern White philanthropists, founded the NAACP in 1908 in response to race riots in Springfield, Illinois. For more about the organization's history, see Darren Rhym, *The NAACP* (Philadelphia: Chelsea House Publishers, 2002); Pierre Hauser, *Great Ambitions: From the "Separate but Equal" Doctrine to the Birth of the NAACP (1896-1909)* (New York: Chelsea House Publishers, 1995); Charles F. Kellogg, *NAACP: A History of the National Association for the Advancement of Colored People: Volume I 1909-1920* (Baltimore: The Johns Hopkins University Press, 1967).

[7] Local branches of the NAACP and CORE entered police brutality cases to defend residents of Bedford Stuyvesant, a large Black section of Brooklyn. "NAACP, CORE Entering Police "Brutality" Cases" *New York Amsterdam News* May 23, 1964, 29; Branch lawyers defended a Black male teenager, who police arrested on the eve of Mother's Day 1964, following a series of aggressive police stops that escalated into abusive treatment of Black women and their arrests; Also see discussion of Johnny Ruiz case in which local NAACP chapter lawyers offered criminal defense.

[8] Congress of Racial Equality (CORE) was founded in 1941 as an outgrowth of Fellowship of Reconciliation (FOR), an interracial, pacifist, Quaker-led group. For a brief history of CORE, see Alan B. Anderson and George W. Pickering, *Confronting the Color Line: The Broken Promise of the Civil Rights Movement in Chicago* (Athens: The University of Georgia Press, 1986); August Meier and Elliott Rudwick, *CORE; A Study in the Civil Rights Movement, 1942–1968* (New York: Oxford University Press, 1973); James R. Ralph, Jr., *Northern Protest: Martin Luther King, Jr., Chicago, and the Civil Rights Movement* (Cambridge: Massachusetts, 1993); Brian Purnell, *Fighting Jim Crow in the County of Kings: The Congress of Racial Equality in Brooklyn (Civil Rights and Struggle)* (Kentucky: University Press of Kentucky, 2015), 129-169, 133-34.

[9] Brian Purnell, *Fighting Jim Crow in the County of Kings: The Congress of Racial Equality in Brooklyn (Civil Rights and Struggle)* (Kentucky: University Press of Kentucky, 2015).

[10] Purnell, *Fighting Jim Crow in the County of Kings*, 133-34.

[11] Purnell, 129-169, 133-34.

analyzes CORE's critique of the state structure, which inadequately redressed grievances against the legal apartheid and Jim Crow practices in the North. However, Purnell fails to explore its critical activism against police Fourth Amendment violations during encounters, particularly, illegal searches, which often led to claims of brutality, retaliatory arrests, excessive force, wrongful death and were major struggles for communities in NYC during the tumultuous 1960s Civil Rights Movement. I focus on the ways that leadership from Brooklyn and Bronx chapters of CORE assumed a unique position to investigate criminal matters. At times these chapters coordinated with local branch leaders at the NAACP, as well as with the East Harlem Tenants Council, one of the neighborhood organizations that added to its missions struggles against police abuse in New York City's Puerto Rican communities.[12] While CORE members lacked formal legal training, they met prosecutors at New York City District Attorney Offices to advocate for criminal defendants and victims of police abuse.

To achieve justice, several citizens turned to civil rights organizations, causing community leaders to utilize what I call "investigative activism," a unique type of activism, different from the conventional non-violent direct action protest. Consequently, as civil rights organizations conducted their own investigations into police violations of *Mapp* and brutality, they demanded information from state authorities and exposed the results to the greater public. These investigations constituted a type of activism because they reframed dominant police narratives, centering the voices of marginalized social groups to explain encounters from the outsider perspective, and attempted to persuade local District Attorneys to investigate criminal charges against police.

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[12] The largest concentration of Puerto Rican people migrated to New York City between 1952 and 1960. For general history of Puerto Rican migration see Felix Ojeda, "Early Puerto Rican Communities in New York," *Extended Roots, From Hawaii to New York Oral History Task Force*, Centro de Estudios Puertorriquenos, Hunter College City University of New York, 1986, 50.

I theorize the police encounters analyzed in this chapter illustrate a pattern of police violations set in 1960s New York City, but also reflect historic relations (between oppressor and the oppressed) and ideologies set during slavery to create Black social death. Scholar Orlando Patterson's definitions of social death is useful for understanding Black life in the 20th century policing and criminal justice.[13] Patterson theorizes two conceptions of social death, extracting them from various concepts of slavery.[14] In cultures with an extrusive conception, Patterson explains, "slavery was closely tied to the penal system and the slave was conceived of as someone who had committed a capital offense."[15] While not all criminals became slaves, Patterson asserts both slaves and criminals "were by their sentences deprived of all civil rights. In the eyes of the law they were nonpersons."[16] Over time and place, slavery remained a structural system and a process that produced social death, desocializing and depersonalizing people.[17] Slavery never ended legally after the Emancipation Proclamation in 1861, or with the U.S. Constitution's Thirteenth Amendment, which reads, anyone "duly convicted of a crime can be forced into involuntary servitude or slavery for the duration of their incarceration." Thus, slavery remains legal as punishment in the penal system. Rather than abolish it, the state evolved slavery. I argue conceptions of slavery as social death are applicable to Black life in postwar New York and explain the realities that racial groups experience with policing and criminal justice. The state violence, in these cases the police conduct, reflects slavery evolved, conceptions of social death that deprive Black and Puerto Rican New Yorkers of newly gained

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[13] Patterson, *Slavery & Social Death*, 39.
[14] With one conception, "the intrusive mode," Patterson argues, "the slave was conceived of as someone who did not belong because he was an outsider, while in the extrusive mode the slave became an outsider because he did not (or no longer) belonged." Patterson, 44.
[15] Patterson, 43.
[16] Patterson, 43.
[17] Patterson, 38.

civil rights.

The narratives in this chapter tell stories of police encounters in which Black citizens continued to experience a form of social death even two years after the *Mapp* decision ostensibly began to constrain police overreach. The narratives here convey a type of universality of Black social death, in which police treated them as outsiders, not belonging, targeted them as criminals for prosecution and denied their civil rights. When juxtaposed, these victims--all of whom were racial minorities--shared an experience of social death because each police encounter and search exposed them to a state process of (mis)recognition and (mis)reading of the Black body that transformed innocent citizens and victims of police misconduct into defendants in the criminal justice system. However, Black communities resisted this social death, challenging police authority and prosecutions within the justice system. I discovered that this resistance differed and outcomes depended on the type of activism groups employed. As victims turned to civil rights organizations, leaders from local chapters took interest in these civilian police contacts and relied on investigative activism and other creative methods to get results from the mounting police state.

Brooklyn CORE Leadership

Among the leaders at Brooklyn CORE, certain people stood out in the struggle against police use of excessive force and violations of the Fourth Amendment, particularly *Mapp* protections against warrantless invasions, "unreasonable searches," and arrests without probable cause. Arnold Goldwag, a Jewish man, slight in build, was known for his deep baritone voice, with which he tirelessly spoke out on community issues and for employing innovative and

aggressive tactics against the police state.[18] James Farmer, CORE's National Director, first met Goldwag during his early civil rights activism. "I remember him," Farmer said, "on some of those auto rides when we were trying to desegregate restaurants."[19] Later, in a press interview, Goldwag spoke about first joining the Civil Rights Movement in 1945, noting it was there and then, "I first learned about democracy."[20] He dropped out of Brooklyn College his junior year to pursue civil rights advocacy at the frontlines of the movement.[21] That decision came as a disappointment to his deeply religious parents. Goldwag told a reporter that his father, a garment worker, "did not approve of [his] work. . . he wanted [him] to become a rabbi like [his] older brother."[22] Instead, at twenty-six years old he joined Brooklyn's CORE chapter and ultimately served as the Community Relations Director.

Goldwag's deep commitment led him to live among the people he served. "CORE is more than a part-time protest movement," Goldwag once said to explain why he left Marine Park, a White neighborhood, to move closer to CORE's Brooklyn headquarters in Bedford-Stuyvesant.[23] By contrast, Bedford-Stuyvesant was 95 percent Black, and its residents lived in cramped apartments, multi-dwelling buildings and converted brownstones.[24] While White people had fled that inner-city neighborhood decades prior, Goldwag did the opposite and chose to become a resident. "[T]here are more rats than people in Bedford-Stuyvesant," he observed. Goldwag launched "Operation Total Strike," a campaign designed to spread a rent strike

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[18] Kenneth Gross, "Arnold Goldwag, in Jail Still Stirs CORE Debate," *New York Post*, April 29, 1964, 2. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 5, Folder XX, Brooklyn Historical Society.
[19] Gross, "Arnold Goldwag, in Jail Still Stirs CORE Debate," 2.
[20] Gross, 2.
[21] "Arnie-Brooklyn College 1956-68" Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 9, Folder 1, Brooklyn Historical Society.
[22] Gross, 2
[23] Gross, 2.
[24] Purnell, *Fighting Jim Crow,* 129-169, 133-34.

throughout Bedford-Stuyvesant, which also worked to end police harassment of residents, among other social ills.[25] As his participation in local activism grew, he gained a reputation among his peers and the community. "A brilliant idea man," is how one CORE official and fellow activist thought of him, but other people in the organization held mixed feelings because "he [had] stepped on a lot of toes."[26] Looking back, another member said "some people may not agree with Arnie's ideas or approaches, but when the chips were down he was there . . . "[27] To stay accessible to the community, he often slept at the headquarters. In 1963 alone, NYPD arrested Goldwag twenty-six times for demonstrating.[28] By April 1964, the *New York Post* wrote, "Goldwag is hardly our favorite character; he has been a disruptive, undisciplined figure within the civil rights movement . . ."[29] Although some media outlets considered him a maverick, he seemed to make any press coverage work to his advantage. And while media outlets seldom covered the criminal justice abuses CORE handled, and most would become lost to history, Goldwag utilized press interviews and CORE flyers to publicly expose police violations of people's rights. From these platforms, CORE fought back, targeting individual police officers and leaders as protest subjects, and mobilized the masses to demonstrate against social injustice.

CORE's Resistance to the Police Abuse of Jonny Ruiz

On May 23rd, 1963, at 3:00 in the morning NYPD officers broke into a Brooklyn home

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[25] In addition, he fought for 300 more traffic lights on street corners, white businesses in Black neighborhoods to hire Black people and end predatory pricing. Joanne Grant, "A Look at the Negro Movement," *National Guardian* 16, no. 12 (December 1963): 8; Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 1, Folder 7 "Community Problems 1962-64," Brooklyn Historical Society.

[26] Gross, 2.

[27] Gross, 2.

[28] From 1963-1964, these arrests all related to demonstrations at the Downstate Medical Center in Brooklyn, Long Beach, Long Island and Cambridge; Jack Roth, "CORE Leader Gets A Year In Jail," unknown newspaper, unknown date, Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 5, Folder 9 "Brooklyn CORE Newsletters 1961-1965, 1967," Brooklyn Historical Society.

[29] "Crime and Punishment: Two Local Dramas," *New York Post*, April 29, 1964, 46. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 5, Folder 9, Brooklyn Historical Society.

without a warrant, and beat Jonny Ruiz and his wife. This encounter demonstrates how officers flouted *Mapp* and avoided court sanction. It also reveals how the Brooklyn chapter of CORE showcased writing as resistance, a unique form of activism through writing about police invasions, searches and brutality as resistance. CORE investigated the Ruiz case and created a leaflet to warn the public and mobilize protest against this form of social death. The circular was entitled, "Demonstrate to Stop Police Brutality," and included the traffic stop symbol with the word "STOP" boldly typed in the center. According to the flyer, "a policeman with badge No. 16393 entered" Ruiz's apartment, claiming "a record player was too loud."[30] CORE disclosed the officer's badge number to make it easier for the public to file a civilian complaint.[31] The flyer only described injuries for Jonny Ruiz, noting "there were bruises all over his body" that required immediate medical attention.[32] A friend, Miguel Maisonet, took Ruiz to the hospital where he received eleven stitches for his head.[33]

CORE's leaflet exposed the limitations of *Mapp v. Ohio* and loopholes police used to avoid its sanctions. Ruiz exercised Fourth Amendment rights that *Mapp* had extended.[34] After the hospital, he went to the precinct to file a complaint against the policeman who, in violation of *Mapp,* had entered his apartment without a warrant or probable cause, and assaulted him and his

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[30] CORE flyer, "Demonstrate to Stop Police Brutality," advertising public demonstration on May 30, 1963, 7pm at the 68th Precinct, 43rd Street and 4th Avenue in Brooklyn, NY. Arnie Goldwag, Brooklyn Congress of Racial Equality (CORE) Collection ARC 002, Box 3, Folder 4 "CORE Picketing Etc. of Police Department, 1963-1964," Brooklyn Historical Society.

[31] Leaders from CORE understood the importance of this information, the badge number adequately identified the officer for filing a subsequent brutality complaint. Abusive officers often withheld their identity, making it difficult for civilians to file complaints. Earlier in the year, the Brooklyn chapter of the NAACP had acted as a watchdog over NYPD's internal investigations of unidentified white officers who abused Black civilians in New York City. Branch leaders forced the NYPD to hold "a lineup of police officers" for a complainant to identify the assailants. It also warned the public of the particular officer and his behavior. George Barner, "NAACP and Police Probing Charges of Cop Brutality," *New York Amsterdam News*, January 19, 1963, 21.

[32] CORE flyer, "Demonstrate to Stop Police Brutality."

[33] CORE flyer, "Demonstrate to Stop Police Brutality."

[34] *Mapp v. Ohio* 367 U.S. 643 (1961).

wife without provocation.[35] However, the *Mapp* case offered no redress for Ruiz because the officer had not made an arrest and never seized evidence from Ruiz's home. *Mapp* only applied in criminal courts, where the exclusionary rule mandated a judge to sanction police by finding illegally seized evidence inadmissible at trial.[36]

CORE's leaflet also exposed methods NYPD employed to prevent against civilian complaints of abuse. It mentioned that police had arrested Ruiz at the precinct for felony assault, alleging Ruiz had intentionally caused serious physical injury to an officer.[37] In that instance, the NYPD transformed Ruiz from a victim, with the rights to file criminal charges against the officer who had beat him, into the aggressor. Maisonet told CORE's investigator that police had stopped him on the street and arrested him, providing him with "no reason whatsoever."[38] They charged him with a misdemeanor, "obstructing an officer."[39] According to CORE, the purpose of the charge was to harass and intimidate Maisonet for taking Ruiz to the hospital.[40] The NAACP agreed to handle the criminal defense for both Ruiz and Maisonet.[41] What happened next in his criminal case has been lost to history and public scrutiny.[42] CORE's leaflet illustrated how police created context for social death, denying both Ruiz and Maisonet civil rights, but also how people resisted.

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[35] CORE flyer, "Demonstrate to Stop Police Brutality."
[36] *Mapp v. Ohio,* 653.
[37] CORE flyer, "Demonstrate to Stop Police Brutality."
[38] CORE flyer, "Demonstrate to Stop: Police Brutality."
[39] News Clippings, Untitled, *New York Amsterdam News,* May 23, 1963. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 4, Brooklyn Historical Society; *See also* CORE flyer, "Demonstrate to Stop Police Brutality."
[40] In news clippings, Untitled, *New York Amsterdam News,* May 23, 1963. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 4, Brooklyn Historical Society; *See also* CORE flyer, "Demonstrate to Stop Police Brutality."
[41] News Clippings, Untitled, *New York Amsterdam News,* May 23, 1963. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 4, Brooklyn Historical Society
[42] No criminal court file exists at the District Attorney's Office for Kings County under Jonny Ruiz's name. The Kings County Clerk believes the records were destroyed or, if the case was dismissed, it was sealed and made unavailable to the public.

Brooklyn CORE's Action Committee Against Police Brutality sponsored the Ruiz leaflet.[43] Prior to producing the circular, its members strategized a response to the police invasion and beating at Ruiz's home. The Committee warned that if "these brutal attacks continue to go unpunished, any racist or sadistic wearing a uniform [would] feel free to vent his viciousness on more innocent people."[44] In addition, they anticipated it would "take a unified action of many people" to stop police brutality and their circular encouraged people to protest and help the Committee.[45] Consequently, activists, advocates and community members demonstrated outside of the Brooklyn precinct in Ruiz's neighborhood.[46] These protest demonstrations led to no avail. Police continued to violate the Fourth Amendment and other citizen rights. Over the next nine months Brooklyn CORE and other organizations investigated police beatings and fatal shootings that went unchecked throughout the city. None of these incidents earned much media coverage and were lost to history. This chapter analyzes these police encounters and reconstructs the civil rights protest that erupted in various form.

Fatal Mapp Violation: Morris Lewis and CORE's Investigation Activism

Early in the morning on June 6, 1963, New York City police officers entered 233 Green Avenue, a building in the Bedford-Stuyvesant section of Brooklyn, causing a Black family to experience extreme social death. Narcotics Bureau detective John McClean and patrolman Richard Salveson obtained a warrant to search a 3rd floor apartment in that building.[47] Based on

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[43] CORE flyer, "Demonstrate to Stop Police Brutality."
[44] CORE flyer, "Demonstrate to Stop Police Brutality."
[45] CORE flyer, "Demonstrate to Stop Police Brutality."
[46] NYPD Memorandum, from Captain Peares P. Meagher, Commanding Officer 23rd Precinct, to Deputy Commissioner, Community Relations, "Supplementary Report RE Distribution of Leaflets," March 25, 1964. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 8, Folders 3-6, Brooklyn Historical Society [hereinafter Supplementary Report RE Distribution of Leaflets].
[47] *See* Kings County Warrant No. 203. Judge Ludwig Glowa, of the Brooklyn Criminal Court, endorsed the warrant and authorized law enforcement for night time entry; *See also* George Barner, "Police Under Fire in Killing of Boy," *New York Amsterdam News*, June 15, 1963, 25. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE)

an informant's tip, the officers believed a man named Curtis Williams was selling heroin from an apartment on the third floor. However, when the police arrived, the building's superintendent informed them that Curtis Williams did not live in the building.[48] Instead of leaving, however, the officers conducted surveillance of the entire building. They searched the roof, then went down to the fourth floor. The first door McClean and Salveson stopped at was apartment 42, where twenty-two year old Clara Lewis and Theodora Williams lived. Clara was resting after working her regular shift as a registered nurse at Greenpoint Hospital and her older sister, Theodora, was asleep. Also inside was Morris Lewis, their eighteen year old brother. He decided to stay with his older sisters for the summer, while looking to earn money for his college tuition at Agricultural and Technical College, back in Greensboro, North Carolina. Morris had successfully completed his first year as an honor student and Air Force Reserve Officer Training Corps (ROTC) Sergeant.[49] At the time, he had only been in New York City for two days before his encounter with the police lead to his unexpected death. The Brooklyn chapter of CORE spoke up about the Lewis home invasion.

On the day of the shooting, Goldwag forced a meeting with Brooklyn's Chief Assistant District Attorney (ADA), Aaron E. Koota.[50] He probed Koota for more than an hour seeking information about the killing while raising concerns about the legality of the police's presence, search and seizure as well as their use of excessive force. Goldwag simultaneously talked to the press about what he had learned and thought of the state's investigation. He also tried to clear the name of the decedent as well as the family members caught up in the collateral damage.

Collection, ARC 002, Box 3, Folder 3, Brooklyn Historical Society.

[48] "Police Brutality" CORE investigation summary notes from "Morris Lewis [Shot by Police, Brooklyn] 1963," Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 3, Brooklyn Historical Society. [hereinafter CORE Investigation Summary Notes, Morris Lewis]

[49] CORE Investigation Summary Notes, Morris Lewis.

[50] "CORE Delegation Asks for Inquiry," *Brooklyn Eagle*, June 13, 1963, 1; Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 2, Brooklyn Historical Society.

Goldwag demanded additional meetings after being dissatisfied with the results.[51] The chief prosecutor complied with his demands, setting several meetings for the three weeks ahead. During those sessions, Koota conferred with Goldwag along with other members of CORE and the NAACP.[52] As a testament to their level of influence, Koota gave the delegation of civil rights activists access to police accounts, statements and testimony.

Subsequently, Isaiah Brunson, a twenty-one year old from Sumter, South Carolina, who had recently joined Brooklyn CORE, created a textual record of the content of those meetings, preserving what law enforcement meant at that time in legal, cultural and political terms.[53] This record reveals how CORE used investigative activism as leverage to influence the state. Simultaneously, CORE's leaders relied on the organization's investigative activism to challenge what they had learned from the state. The activists also had the opportunity to present witnesses to Koota for further consideration. Ultimately CORE wanted the state to pursue criminal charges against the policemen.

Narratives of what happened on that fatal day varied between the accounts in the press, police and members of the Lewis family. Assuming a role of activist interrogator, CORE intervened to find out what happened when Detective McClean and Officer Salveson broke through the Lewis' apartment door on that day.[54] CORE members conducted investigations, interviewed witnesses and pieced together information from various accounts available at the

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[51] Charles Ryan, "Probe of Student's Death to Continue," *Brooklyn Eagle,* June 18, 1963, 1. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 3, Brooklyn Historical Society.
[52] "CORE Delegation Asks for Inquiry," 1.
[53] During the investigation, a CORE member, likely Isaiah Brunson, took crude notes, consisting of several scraps of paper. CORE also drafted a one page document entitled, "Police Brutality," (undated) which summarized what police contended had happened and CORE's analysis. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 3, Brooklyn Historical Society. [hereinafter CORE's Summary and Analysis: Police Contention].
[54] "Slain Youth Estate Ready to Sue the City," *New York Amsterdam News,* June 22, 1963, 25. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 3, "Morris, Lewis-1963 [Shot by Police, Brooklyn]," Brooklyn Historical Society.

time. Their style of investigation emerged a new form of activism because each inquiry was motivated by a desire for change. As CORE members collected information they demanded meetings with law enforcement officials, thus creating opportunities to be present early in the decision-making process. CORE used the act of discovery as a means to obtain crucial and additional evidence from investigations by the police and prosecutor. CORE used its investigation discoveries to hold the NYPD accountable to the Lewis family, prevent a police cover up and ensure that the state's investigation of Lewis' murder was fair. But collecting information was not always easy for CORE and the process left many questions unanswered.

The NYPD conducted an investigation of the Lewis shooting and waited a few weeks to release their version of what happened. The press reported the police version, "at approximately 1:40 in the morning," an aroused Clara confronted the two officers who were not in uniform.[55] A scuffle ensued between Detective McClean and Clara.[56] Morris was asleep in the back of the apartment but the commotion woke him. Alarmed, Morris ran to Clara's aid as the two men were attacking her. "Detective McClean fired two shots from his service revolver, one striking Morris in the chest" and killing him immediately. After fatally shooting Morris, the police "claimed to have found a quantity of narcotics in the apartment and arrested Clara."[57] Brooklyn CORE did not rely on press reports. Its members conducted further investigations.

When leaders from Brooklyn CORE met with Koota on the day of the shooting, they obtained differing and incomplete accounts from NYPD. Isaiah Brunson was one of the members present and jotted down some notes.[58] In one police account, Brunson noted, when the officers arrived the building supervisor "was glad to see them" and directed them to Clara Lewis'

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[55] Barner, "Police Under Fire in Killing of Boy," 25.
[56] Barner, "Police Under Fire in Killing of Boy," 25; "Slain Youth Estate Ready to Sue the City," 25.
[57] Barner, "Police Under Fire in Killing of Boy," 25.
[58] CORE's Summary and Analysis: Police Contention.

apartment because of "narcotics traffic."[59] The officers claimed they knocked on the door, Clara answered, and then they presented her with a warrant, but she tried to prevent their entry.[60] Police told the press what they saw immediately inside the apartment and why the shooting occurred. Their accounts also contained a defense against any Fourth Amendment entitlements the Lewis family had under *Mapp*. Once inside, McClean and Salveson alleged seeing "four glassine envelopes containing a white powder substance," which they suspected was heroin.[61] According to McClean, he immediately placed Clara under arrest for possessing illegal narcotics. While escorting Clara out of the apartment, he claimed Morris ran into the room and "pulled a knife from his pocket."[62] Based on this account, NYPD witnesses told reporters, Morris was a threat and his ultimate death was "justifiable homicide by the officer."[63] Goldwag rejected that assessment.

During their own investigation, Goldwag and Brunson astutely noticed that McClean provided two accounts to explain Morris's shooting and their violations of *Mapp*. McClean told officers who reported to the scene immediately after the shooting the first account. CORE's investigation notes indicate that McClean initially claimed that Morris "attacked" and "stabbed" him, then "threw him down stairs and stomped on him."[64] Consequently, McClean drew his revolver and fired it twice. One shot hit a wall and the other was fatal, hitting Morris in the chest.[65] CORE gained access to the official police report, which was the second account that the

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[59] CORE's Summary and Analysis: Police Contention; Barner, "Police Under Fire in Killing of Boy," 25.
[60] CORE's Summary and Analysis: Police Contention.
[61] CORE's Summary and Analysis: Police Contention; Ryan, "Probe of Student's Death to Continue."
[62] Ryan, "Probe of Student's Death to Continue."
[63] Barner, "Police Under Fire in Killing of Boy," 25.
[64] Notes, "'Police Brutality,' Morris Lewis Investigation Summary" (undated). Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 3, Brooklyn Historical Society. [hereinafter Morris Lewis Investigation Summary]; CORE leaders likely saw the police report during the sessions at the Brooklyn District Attorney's Office; however, they did not retain a copy for their file on Morris Lewis.
[65] Morris Lewis Investigation Summary.

NYPD made for the Lewis case. In it, CORE discovered that McClean had omitted being thrown down steps, but simply alleged Morris had stabbed him with the knife during their scuffle.[66] CORE members found it odd for an officer to forget such a detail.[67] Such an oversight by a police officer was grounds for challenging McClean's credibility and his ability to recall the events for that day. Thus, CORE memorialized some of these police discrepancies by keeping notes in a file on Morris Lewis.[68]

Brooklyn CORE Challenge Police Mapp Violations: No Probable Cause in Lewis Invasion

Part of CORE's investigative activism is related to Fourth Amendment claims extended by *Mapp v. Ohio*. In the meeting at the District Attorney's Office, CORE leaders challenged the basis and validity of Clara's arrest, questioning the validity of the warrant, whether the search and seizure was reasonable and what led the police to believe there was probable cause.[69] The police had crafted narratives for the search and seizure of the Lewis home that comported to the prerequisites set by *Mapp v. Ohio*, and even the "plain view" exception to *Mapp*. According to their version of the events, when they knocked, Clara opened the door enough for narcotics to be visible. Based on the "plain view" doctrine and New York criminal procedure rules, law enforcement officers have authority to conduct a search without a warrant and seize contraband, weapons and illegal drugs whenever visible in plain view of officers.[70] The officers for the Lewis search had tailored the facts to appear consistent with the plain view doctrine. The officers alleged seeing four packets of drugs. It was the observation of crime in "plain view" that

[66] Morris Lewis Investigation Summary.
[67] Morris Lewis Investigation Summary.
[68] CORE Investigation Summary Notes, Morris Lewis.
[69] "CORE Delegation Asks for Inquiry," 1; To show "probable cause" existed for a search or arrest police must articulate whether it was "more probable than not" that a person committed or was in process of committing crime. Bruce G. Berner, "Search and Seizure: Status and Methodology," *Valparaiso University Law Review* 8, no. 3 (1974): 494.
[70] For further explanation of the "plain view" doctrine and its legal interpretation, Berner, "Search and Seizure," 492-493.

a judge could determine gave the policemen probable cause to search the Lewis apartment. Based on that fact pattern, they did not need a warrant to enter the home and seize the evidence that ultimately led to Clara Lewis's arrest for criminal possession of narcotics. CORE suspected that the police were being deceptive.

Police Flout Mapp in Court: Dropsy

Several scholars and governmental investigations later confirmed that police regularly lied to cover up violations of search and seizure, and tailored facts during court testimony as part of a much larger systemic and social problem.[71] In *The Moral Hazards,* Allan Kornblum provides an extensive discussion of officers in the NYPD, noting their propensity for deception and dishonesty while enforcing local laws.[72] Barlow's study of NYPD police testimony after *Mapp* interposed the exclusionary rule in state search and seizure cases.[73] She examined "dropsy" cases, hence named, because police typically testified that a suspect had "dropped" drugs in plain view of the arresting officer.[74] Barlow's study concluded that in these cases police regularly tailored facts to avoid sanction under the new *Mapp* decision. A short time after Barlow's study, practitioner and jurist, Irving Younger asserted, "every lawyer who practices in the criminal courts knows that police perjury is commonplace."[75]

As a result of its investigation activism, CORE helped the Lewis family uncover several facts that police left out of its official narrative and discovered important discrepancies in the reported police account. The police claimed that when they spoke to the building supervisor he

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[71] Whitman Knapp, Rep. of the Comm'n to Investigate Allegations of Police Corruption and the City's anti-Corruption Proc. (1972); President's Comm'n on law Enforcement and Admin. of Justice, Task Force Rep.: The Police (1967).
[72] Allan N. Kornblum, *The Moral Hazards: Police Strategies for Honesty and Ethical Behavior* (Lexington: Lexington Books, 1967), 15-46.
[73] Sarah Barlow, "Patterns of Arrests for Misdemeanor Narcotics Possession: Manhattan Police Practices 1960-62" *Criminal Law Bulletin* 4 (1968): 549-50.
[74] Barlow, "Patterns of Arrests,"549-50.
[75] Irving Younger, "The Perjury Routine," *The Nation*, May 8, 1967, 596-97.

complained about "narcotic traffick" from the Lewis apartment. CORE's investigator interviewed that supervisor who said he told police that "he never had any complaints against Clara or Theodora."[76] He volunteered to testify in court that he never directed the officers to the Lewis apartment. CORE's investigator also interviewed Clara for her account.

Clara told CORE's investigator she was in the front of the apartment when two men "broke the door in."[77] The men and the late night entry frightened her. They never identified themselves as policemen, showed badges, or presented her with a search warrant. At that time, she had no idea they were conducting an investigation. After the intruders broke into the apartment, Clara said, "they proceeded to beat, assault and attack."[78] CORE's investigator observed some of Clara's injuries and noted she "[had] marks on her shoulder and legs."[79] The investigator added a notation that "one of the officers badly 'roughed her up.'"[80] Getting medical treatment was important to establish independent corroboration for Clara's injuries, and her account that police physically attacked her. This type of evidence could have contradicted the account given by police. But CORE's notes indicated that "Clara did not get to the doctor" because police prevented her. Instead of taking her to the hospital, they arrested Clara at the scene, then took her to the precinct and charged her with possession of narcotics.[81]

With respect to the narcotics charge, the CORE delegation met with Brooklyn's Chief ADA to question how the officers came to discover those four small glassine envelopes. The Chief ADA provided the team with state evidence, police statements and documents that gave

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[76] Notes from Folder 3, "Morris, Lewis-1963 [Shot by Police, Brooklyn]" Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 3, Brooklyn Historical Society. [hereinafter "Morris, Lewis-1963 [Shot by Police, Brooklyn]"
[77] "Morris, Lewis-1963 [Shot by Police, Brooklyn]"
[78] "Morris, Lewis-1963 [Shot by Police, Brooklyn]"
[79] "Morris, Lewis-1963 [Shot by Police, Brooklyn]"
[80] "Morris, Lewis-1963 [Shot by Police, Brooklyn]"
[81] "Morris, Lewis-1963 [Shot by Police, Brooklyn]"

further details about the recovery. CORE members took notes of what they observed during the meeting and their investigation eventually led them to a possible smoking gun.[82] In one report the police contradicted themselves, implicating the Fourth Amendment, *Mapp*'s exclusionary rule, as well as the plain view exception to the new search and seizure law. CORE's investigation notes indicated that the police had actually recovered the four glassines from "inside the toilet bowl."[83] CORE's delegation understood this information was bad for the Brooklyn District Attorney's case because if the police had in fact made the recovery from the "inside the toilet" then they could not have observed anything "in plain view" from the Lewis' apartment door. And a criminal court judge could easily have reasonable doubt as to whether the glassines were in plain view of the officers at the time they entered the Lewis apartment. CORE would not let the District Attorney ignore this law, which was clear: without a valid warrant or the plain view doctrine, the police lacked probable cause to conduct a search and seize the alleged evidence. The results of CORE's advocacy should have been enough for the District Attorney to dismiss criminal prosecution against Clara, but the Chief ADA did not immediately concede. When Clara appeared in Brooklyn Criminal Court, the state's laboratory had already tested the four glassine envelopes, and revealed that the white powder was not a narcotic.[84] Consequently, judge Benjamin H. Schorr dismissed the drug charges against Clara.[85] Her lawyer did not need to argue under *Mapp* that the police search and seizure was unreasonable, or that the warrant was invalid because it had not specified the Lewis' apartment as the location for the search. Although Clara was free, the Lewis family was not satisfied because they wanted

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[82] Arnold Goldwag, CORE Public Relations Director, led the five man delegation, which included Isaiah Brunson, Housing Chairman, William Brown, Gilbert Banks and James McDonald of the New York CORE Office. "CORE Delegation Asks for Inquiry," *Brooklyn Eagle,* June 13, 1963, 1.
[83] "CORE Delegation Asks for Inquiry," 1.
[84] Barner, "Slain Boy's Kin Sue City For $650,000," 25.
[85] Barner, "Slain Boy's Kin Sue City For $650,000," 25.

Morris's innocence defended and his killers prosecuted.

CORE's Investigative Activism: Using Writing for Resistance

Arnold Goldwag spoke to the press about the Lewis case, asking why was it "necessary" for the officer "to shoot and kill Morris?"[86] Goldwag also raised this question with Chief ADA Koota. Goldwag and members from CORE and the NAACP emphasized the issue of excessive force and pressed the District Attorney's Office to investigate the police for murdering Morris. Koota reframed the issues away from what CORE and the other activists had raised by questioning whether the civil rights organizations were objective enough to conduct an unbiased investigation. But leaders in CORE and the NAACP were neither discouraged nor distracted by the state's diversion tactics. They continued to press the issues and held the state accountable for Morris' death. About a week after the shooting, the *New York Amsterdam News* began covering the incident.

The newspaper printed a close-up photograph of Morris Lewis, gazing straight into the camera, dressed in his ROTC uniform, tie, hat and decorated with metals. Above the photograph read, "Was He Wrong?" and followed with the headline, "Police Under Fire In Killing Of Boy: Mistaken Identity May Be An Issue."[87] The *New York Amsterdam News* published several articles on the story which provided the police version as well as what CORE and other advocates for the family had contended to humanize Morris and hold police accountable. Goldwag took advantage of the press coverage. Both in meetings with the Brooklyn District Attorney's Office and in the press, the delegation contended that Morris never provoked the police. The outspoken Goldwag explained to reporters, he would have been justified in attacking

[86] "CORE Meets with Brooklyn's Chief Assistant DA Koota for Answers," *Brooklyn Eagle,* June 18, 1963.
[87] Barner, "Police Under Fire in Killing of Boy," 25.

the police, telling the press, "the youth attacked a man he saw grabbing his sister."[88]

Challenging Police Deadly Force

CORE strongly doubted Morris was the aggressor as Detective McClean claimed and several newspapers had reported. According to press reports, Morris ran from the back of the apartment to investigate the commotion after Clara screamed for help. At that point, the police claimed Morris "had a knife" and "attacked" the officer with it. In addition, CORE learned that the NYPD alleged Morris had thrown detective McClean down a flight of stairs, stomped on him and "stabbed the cop twice."[89] The state produced a knife as evidence.[90] CORE searched for rebuttal evidence. Goldwag believed the police version was implausible because, according to CORE's notes, it was unlikely for Morris to have carried a knife "in his pocket" since he had "just woke up and came from the bed."[91] In fact, it even seemed ridiculous, after CORE considered it against the evidence. CORE had previously interviewed residents from the building, including a third floor tenant who said he heard "two shots" and saw the "kid wearing underwear."[92]

CORE also took note of Officer Salveson's account, in which he admitted that he and McClean "tried pushing in" Carla's apartment door, but ultimately "kicked [the] door open."[93] Salveson said at that point he "didn't see a knife" in Morris' hand. In fact, he recalled, "Morris

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[88] *See* "CORE Delegation Asks for Inquiry"; Ryan, "Probe of Student's Death to Continue."

[89] Police Captain Kusic was present for meetings with the Chief Prosecutor and CORE delegation. CORE noted that Captain Kusic claimed Morris "stabbed [the] cop twice." See "CHPT Kusic" scrap notes (undated) and "Police Brutality" summary notes from "Morris, Lewis-1963 [Shot by Police, Brooklyn]" Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 3, Brooklyn Historical Society.

[90] Salveson" scrap notes from "Morris, Lewis-1963 [Shot by Police, Brooklyn]" Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 3, Brooklyn Historical Society.

[91] "Morris, Lewis-1963 [Shot by Police, Brooklyn]."

[92] *See* "Mr. Jackson" scrap notes (undated) from "Morris, Lewis-1963 [Shot by Police, Brooklyn]" Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 3, Brooklyn Historical Society.

[93] *See* "Salveson" scrap notes from "Morris, Lewis-1963 [Shot by Police, Brooklyn]" Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 3, Brooklyn Historical Society.

got at McClean in hallway both hands above his head."[94] CORE determined that Morris died on the fourth floor and not on a lower floor where McClean claimed Morris threw him. CORE's investigation notes contained a sketch drawing of Morris' position after the shooting.[95] Their graphic rendition placed an "X" mark for where Morris's head landed on the staircase and included a note stating Morris' feet remained up "on the landing" of the fourth floor.[96] Thus, CORE's delegation concluded Morris was "shot on the fourth floor" as he stood on the landing. However, CORE and the family needed to find evidence that definitively determined whether police used excessive force and were justified when they shot Morris.

Despite having had no training or experience in forensics, Goldwag, Brunson and other CORE leaders attempted to determine how Morris "took the bullet."[97] In the police report, Detective McClean indicated he had shot Morris in the chest. However, the family contended McClean shot Morris in the back. By the time the CORE delegation first met with the Chief ADA the medical examiner had already conducted an autopsy for Morris that concluded McClean's bullet entered Morris from the "left side front, exited the right side rear," and left a "hole where the bullet entered the size of [a] half dollar."[98] The report stated that the bullet entered Morris from his frontside, but the cadre of activists found something else odd when they noticed the "medical exam report did not mention one way or another whether powder marks"

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[94] "Salveson" scrap notes; Although the police had seized a knife from the apartment, CORE examined it and doubted Morris used it to cause McClean's injuries, which were only superficial cuts on his chest, scalp and neck. *See also* "Showed Pocket Knife with Black Handle (ser. blades)" scrap notes from "Morris, Lewis-1963 [Shot by Police, Brooklyn]" Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 3, Brooklyn Historical Society.

[95] *See* "Shot on 4th Fl" sketch and notes" from "Morris, Lewis-1963 [Shot by Police, Brooklyn]" Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 3, Brooklyn Historical Society.

[96] "Shot on 4th Fl" sketch and notes."

[97] "CORE Delegation Asks for Inquiry," *Brooklyn Eagle,* June 13, 1963, 1.

[98] *See* "Then He Heard 2 Shots" CORE scrap notes from "Morris, Lewis-1963 [Shot by Police, Brooklyn]" Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 3, Brooklyn Historical Society.

were left on the slain body. CORE's investigative activism was savvy enough to question forensic evidence against the police accounts. Powder marks from McClean's gun would indicate Morris was shot during "a close struggle" as Detective McClean had claimed.[99] But the medical examination report proffered no evidence to corroborate McClean's account or forensics that justified his use of deadly force. It "indicated [Morris] Lewis was well built" but CORE took the position that that alone was not grounds for McClean to shoot to kill.

Apart from the autopsy, CORE obtained evidence to corroborate that the police had beat Morris. During meetings with the District Attorney's Office, CORE learned of statements made by officers, one which stated that "McClean took his gun out and beat Lewis over the head."[100] The delegation of activists petitioned for another autopsy, this time with an independent expert to examine Morris' body. Chief ADA Koota also agreed to present Morris' shooting before a Brooklyn grand jury. This body of New Yorkers would hear evidence, police testimony and the testimony of other witnesses to determine whether the state had enough evidence to file criminal charges against the police officers. Because the grand jury met secretly, CORE members were barred from presenting their discoveries of police inconsistencies and damaging evidence. Instead, the grand jury had to rely on Chief ADA Koota's statement to them, that "[i]f there is substantial contradiction in facts then he will put that before the grand jury."[101] The delegation of CORE and NAACP activists never commented on the outcome of the grand jury investigation, it even evaded attention from mainstream and Black press accounts. What

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[99] *See* CORE Investigation Notes, "Police Brutality" from "Morris, Lewis-1963 [Shot by Police, Brooklyn]," Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 3, Brooklyn Historical Society.

[100] *See* "A Lot of Traffic" CORE scrap notes from "Morris, Lewis-1963 [Shot by Police, Brooklyn]" Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 3, Brooklyn Historical Society.

[101] *See* "Med Exam Report Indicates Lewis Was Well Built" CORE scrap notes from "Morris, Lewis-1963 [Shot by Police, Brooklyn]" Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 3, Brooklyn Historical Society.

grabbed headlines was the actions of the private attorneys, Joseph L. McClemore and Martin Gallin, who represented the Lewis family and filed civil lawsuits against the City of New York and NYPD, seeking $650,000 in damages.[102]

Morris's father, Octavio O. Lewis, rejected social death, and on behalf of his son's estate, he filed a wrongful death claim for $500,000.[103] It alleged police officers shoved Morris "down the stairs" then detective McClean "shot the decedent, as a result of which Morris died." Clara sued on her own behalf, alleging "assault, injury, false arrest and malicious prosecution," and asked for $150,000 in damages. CORE and the NAACP received little credit for their investigative activism. But after they pressed and probed for a criminal investigation into the police, the prosecutor opened a grand jury investigation, the Lewis family increased the amount of damages to $5.8 million, and their attorneys filed a claim with the City Comptroller.[104] In the new lawsuit, their attorneys asserted that the City of New York was "negligent" for employing law enforcement officers "who had vicious tendencies" and that the individual officers were "negligent" because their actions were "willful" and unjustified.[105] The city settled the million dollar lawsuit for an undisclosed amount. However, this settlement did nothing to prevent systemic problems. CORE's investigative activism intended more than just criminal prosecution of the individual officers, but also systemic change.

In September 1963, CORE's Brooklyn chapter filed a general complaint about police brutality to the Police Commissioner Office.[106] In their statement, CORE explained it was "not

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[102] Barner, "Slain Boy's Kin Sue City For $650,000," 25; Barner, "Police Under Fire in Killing of Boy," 25; "$650,000 Sought in Arrest, Death," *Brooklyn Eagle,* June 26, 1963, 4.
[103] "$650,000 Sought in Arrest, Death," 4.
[104] Simon Anekwe, "City Hit with $5.8 Million Suit By Estate of Boy Cops Killed: Sister, Roughed by Cops Sues Too," *New York Amsterdam News*, August 24, 1963, 23.
[105] Anekwe, "City Hit with $5.8 Million Suit," 23.
[106] Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3 Folder 2, "Brutality Cases NYCPD 1962-1964" Brooklyn Historical Society.

for the purpose of punishing any individual officer, but for the overall purpose of showing a pattern of callousness and disregard for common courtesy for Negro people."[107] CORE was not seeking vengeance or chastisement of any individual; they sought to demonstrate that NYPD officers tended to "go above and beyond the call of duty . . . to the detriment of all."[108] CORE made their complaint retroactive to a year prior to emphasize that a pattern of police misconduct existed. CORE suggested a solution that demanded the Commissioner create an "intensive program" to correct the problem and "insure against repetition."[109] Ultimately, the state ignored CORE's plea and its noncompliance left their concerns unresolved, leaving more citizens vulnerable to police violations of *Mapp* and their Fourth Amendment rights as well as police brutality.

Jesse Roberts Metaphoric Lynching: Illegal Search of Black Business

A thirty-five-year-old Black man turned to CORE in New York City to fight yet another illegal police search. But this incident went beyond what anyone had seen before in terms of police disregard for Fourth Amendment guarantees, it involved unusual racist torture and ritual violence.[110] Fortunately, the victim, Jesse Roberts, survived to tell what happened. Leaders at the Bronx chapter of CORE interviewed Roberts and created a fact sheet to detail "the brutal and inhuman experience described," which they later distributed to New York Governor Nelson Rockefeller, New York City Mayor, Robert F. Wagner, Police Commissioner, Michael Murphy,

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[107] *See* "Copy of Statement given to Captain Jenkins of 9th Precinct" in Kings County, September 1963, Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 2, Brooklyn Historical Society.
[108] "Statement Given to Captain Jenkins," September 1963.
[109] "Statement Given to Captain Jenkins," September 1963.
[110] Letter from James Farmer to Ad Hoc City Wide Committee on Fair Police Protection, Re Mr. Jesse Roberts, May 18, 1964; CORE Fact Sheet & Memo "Police Brutality Case of Jesse Roberts," February 13, 1964, 1-4. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 4, Brooklyn Historical Society.

the UN Commission on Human Rights and various law enforcement officials.[111] At the time of the incident, Roberts had no criminal record and he owned a successful auto repair shop in the Bronx.

On November 7, 1963, Roberts went to the 48th police precinct in the Bronx to report his car as stolen. He named a teenager from his neighborhood, Richard Warme, as one of the suspects. Roberts was reluctant to pursue the case against the teen, "because I'd seen one of the boys before," he told the police, "I had no intentions of pressing the charge."[112] He simply wanted his car and keys returned but the police had a hidden agenda. What Roberts did not know was that Detectives Rodriguez and Kilroy had already found his car with the keys, and at the same time Roberts reported to the precinct, they were also detaining Warme along with another boy. Under the pretext of finding Roberts' car keys, Detectives Rodriguez and Kilroy left the precinct with Warme. Meanwhile, Roberts grew tired of waiting at the precinct and left. Later that day, Roberts returned to his shop and saw Kilroy, Rodriguez and an unfamiliar Detective Drumond along with Warme inside. They did not have his consent or a warrant, yet they searched the shop anyway. Inside a fire pail, Detective Drumond allegedly found "a brown bag" containing a large amount of marijuana. Roberts denied owning it, telling the police he "never saw or handled the bag before."[113] The police "shoved and pushed" and manhandled Roberts before they arrested him for criminal possession of narcotics, a felony.

At around 11:30 pm, the officers took Roberts to the 48th precinct. There, Roberts said

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[111] Letter from Herbert Callender, Chairman, Bronx Chapter of CORE, February 13, 1964; CORE Fact Sheet & Memo "Police Brutality Case of Jesse Roberts" February 13, 1964, 1-4, Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 4, Brooklyn Historical Society.
[112] CORE Fact Sheet & Memo "Police Brutality Case of Jesse Roberts" February 13, 1964, 1-4, Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 4, Brooklyn Historical Society.
[113] *See* Bronx CORE flyer, "Stop Police Brutality," for demonstration at Police Headquarters March 6, 1964. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 4, Brooklyn Historical Society.

policemen "vigorously interrogated" him about "alleged possession of guns" and a broken police broadcast radio and receiver that was in his shop.[114] Later, in his interview at CORE, Roberts elaborated on what took place inside the "cage," which was a detention pen at the precinct. Inside the cage, three unidentified officers stripped Roberts naked and forced him to stand on a stack of books. They ordered him to stretch his arms out in a cross like position and then handcuffed his wrists to the cage. One officer kicked the books from underneath Roberts, causing his bare body to dangle "in a crucifixion pose." Next, an officer entered the cage "dressed in a white sheet" similar to the Ku Klux Klan (KKK) uniform.[115] A policeman then blindfolded Roberts and threw hot coffee on his naked body. Officers took turns beating him for several hours. They only stopped to force him to clean up the mess, then continued beating him into the next day.

Next, NYPD Bronx officers violated Robert's Fourth Amendment rights secured by *Mapp v. Ohio*. When Roberts first walked into the Bronx precinct, the police wanted him to press charges against Warme and his friend for auto theft, allowing them to arrest the Black youth. After Roberts refused, the police spent the next eighteen hours criminalizing him. This process began with a warrantless search of Roberts' business and the illegal seizure of alleged drugs, which formed the basis for his eventual arrest.

Metaphorical Lynching: Police Crucify Jesse Roberts

At the precinct, Bronx NYPD officers simulated lynch violence, enforcing social death against Roberts and the two Black youth in their custody. By stripping Roberts, forcing him to assume the crucifixion pose, burning and beating him, the officers evoked ritual violence from a

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[114] CORE Fact Sheet & Memo "Police Brutality Case of Jesse Roberts," February 13, 1964, 1-4. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 4, Brooklyn Historical Society.
[115] Les Matthews, "PD Mouthpiece Knows it's Not as 100 Picket," *New York Amsterdam News,* February 29, 1964, 21.

history of lynching in American life and culture.[116] James E. Cutler's study of lynching in the United States details early practices of lynching and how it changed over time.[117] Post-emancipation, lynching also became racialized as the majority of victims were Black.[118] Law enforcement officials frequently participated in lynchings. Thus these local police officers and sheriffs often refused to protect victims from angry individuals, but also entire white communities, who stormed local jails and courthouses to kidnap Black people for lynchings. Several law enforcement officers were also members of the KKK and directly participated in the violence, and at times they congregated with white masses as spectators. Anti-lynching activist Ida B. Wells exposed the structural, rhetorical and desired effect of frequent lynching violence in America.[119] In addition to cataloguing the frequency, Wells revealed that alleging crime, particularly rape, became the excuse white people used to justify lynching a majority of Black victims.[120] Well also uncovered that most Black victims had experienced economic progress, and rose to a social status that exceeded white people's expectation, which caused resentment and violence.[121] Overall, Wells' study deconstructs lynching as a process that criminally smeared victims, their social characters, and drove Black competition away with terror and

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[116] *See generally* Trudier Harris, *Exorcising Blackness: Historical and Literary Lynching and Burning Rituals* (Bloomington: Indiana University Press, 1985), 7. for Harris' discussion on pornographic divination rites and castration practices during lynchings.

[117] James E. Cutler, *Lynch-law: An Investigation into the History of Lynching in the United States* (New York: Longmans, Green, and Co., 1905). Between the Revolutionary War and as early as the 1830s, lynching included various elements and did not always end in death. It existed as a type of summary justice; an extralegal punishment "meted out without a court hearing or by a self-constituted court." Lynch executions happened at the frontier or border states with great frequency, but also occurred where law and civil institutions were in full force. In parlance from those times, "severely lynched" meant an individual received one hundred lashes or was whipped then tarred and feathered. Being lynched also meant a person was simply run out of town. Ironically, a person could be lynched then hanged. After 1860, the meaning of lynching changed to symbolize punishment by death, a ritualized violence for any number of offenses and innocuous social transgressions.

[118] For a list of offenses see Culter, *Lynch Law*, 175, 176, and 167.

[119] Ida B. Wells, "Lynch Law in America," *The Arena* (January 1900):15-24. For further background on Wells, her life and anti-lynching legacy, Paula Giddings, *Ida: A Sword Among Lions: Ida B. Wells and the Campaign against Lynching* (New York: HarperCollins, 2008).

[120] Wells, "Lynch Law in America," 15-24.

[121] Wells, "Lynch Law in America," 15-24.

fiendish tortures.[122] At the time of Roberts' encounter with police, he had never been arrested before. He also rejected police desires for him to press charges against the two Black youth who went joyriding in his car. But CORE would later discover, what offended the Bronx NYPD officers the most was Roberts' entrepreneurial status. Although the police did not kill Roberts, they subjected him to metaphorical lynching.

Exorcising Blackness, by Trudier Harris, provides literary analysis for social constructions of metaphoric lynching rituals.[123] Accordingly, she asserts metaphoric lynching, like literal lynching, set a pervasive tone of fear and apprehension.[124] The burning cross and crucifixion serve as symbols and metaphors for the lynch figure. Anyone sensitive to Black history and circumstances in the United States would have understood that the lynching metaphor was stimuli in which Black life and responses were made. Scholars have long reported that the out migration of Black people was greatest from southern counties and areas where racial violence and lynchings had occurred, and many of these Black migrants ended up in the North and New York City.[125] But being up North, as in Roberts case, did not shield him, or other Black people, from lynch type violence. NYPD officers simulated a lynching, causing Roberts injury and compliance.

After he cooperated with the criminalization of the youth, Warme and friend, the police filed criminal charges against Roberts too. In total, the police held Roberts for thirty-six hours before he could post bail. He immediately sought medical attention. His doctor admitted him to the hospital for serious physical injuries, two cracked ribs, a broken tailbone and several bruises

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[122] Wells, "Lynch Law in America," 15-24.
[123] Harris, *Exorcising Blackness*, 95.
[124] Harris, *Exorcising Blackness*, 95.
[125] Stewart E. Tolnay and E. M. Beck, "Racial Violence and Black Migration in the American South, 1910 to 1930," *American Sociological Review* 57, no. 1 (1992): 103-116; Alferdteen Harrison, *Black Exodus: The Great Migration from the American South* (Jackson: University Press of Mississippi, 1992).

and contusions. After being treated, Roberts then went to the CORE's national office in New York City looking for redress against the illegal search, racist police torment, beating, unjust arrest and malicious prosecution.

National CORE: Roberts' Case Grounds for Civilian Complaint Review Board

The national office considered what happened to Roberts a "major problem in New York, particularly for Negroes and Puerto Ricans."[126] His case convinced national CORE of the pressing need for establishing a civilian complaint review board (CCRB) to review people's grievances against NYPD officers. While Roberts' case stood out because of overt racist police behavior, the national leadership team considered it one among "scores of examples of alleged police brutality for which there has been no redress."[127] Roberts faced the same problem other victims had faced in making a complaint against police brutality. Every victim bore the burden of proving their complaint, which required evidence and independent corroboration. Roberts had no witnesses to corroborate his complaint against the police. James Farmer, National Director of CORE, concluded that there was "no objective means of determining the truth of Mr. Roberts' claim."[128]Thus, national CORE's pessimism left it to local chapters to fight for Roberts. Here the Bronx chapter, like the Brooklyn chapter had done in the Morris case, fought with tenacity to achieve justice for Roberts.

Bronx CORE's Investigative Activism

The Bronx chapter of CORE investigated Roberts' case and, based on the precedent set in

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[126] National CORE Open Letter, From James Farmer, Re: in support of Jesse Roberts and City Councilman Theodore Weiss' Civilian Review Board Bill, May 18, 1964. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 4, Brooklyn Historical Society. [hereinafter Farmer letter in support of Roberts]

[127] "Farmer letter in support of Roberts," May 18, 1964.

[128] "Farmer letter in support of Roberts," May 18, 1964.

Mapp v. Ohio, determined there was "a question of search and seizure."[129] In his meeting at the local Bronx chapter of CORE, Roberts asserted that he would have never "given the police his keys and allow them to search his shop without being present."[130] He also told Bronx CORE's Chairman, Herbert Callender that he never saw "Drumond take [marijuana] out of the pail," suggesting that the police later planted the evidence.[131] Bronx CORE considered the police's behavior unlawful and Roberts' arrest unjust. In a memorandum, the local chapter wrote that Roberts' "arrest raise[d] an interesting point: How can evidence ascertained illegally hold merit, when there was no search warrant to substantiate document proof that could be used in court?"[132] Ultimately, Bronx CORE concluded that police targeted Roberts because he was a successful Black businessman.[133] Their ultimate goal was "just one more attempt to force Mr. Roberts to close his shop" and get him evicted.[134]

As part of its activism, chapter leaders met with NYPD Inspector John E. Sexton, commander of the Seventh Detective Division, Bronx.[135] They discussed detective Drumond's claim that Roberts had given him keys to enter the business and Roberts' denial of this.[136] Later, Inspector Sexton spoke to the press about the department's position, and summarily denied police brutality and all of Roberts' allegations.[137]

Herbert Callender, chairman of Bronx CORE, wrote a letter to Governor Rockefeller, Mayor Wagner and Commissioner Murphy, calling for an immediate "complete and thorough

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[129] CORE Fact Sheet & Memo From Herbert Callender, Chairman, Re: "Police Brutality Case of Jesse Roberts," February 13, 1964, 1-4. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 4, Brooklyn Historical Society. [hereinafter CORE Fact Sheet on Roberts].
[130] "CORE Fact Sheet on Roberts," February 13, 1964, 1-4.
[131] "CORE Fact Sheet on Roberts," 1-4.
[132] "CORE Fact Sheet on Roberts," 1-4.
[133] "CORE Fact Sheet on Roberts," 1-4.
[134] "CORE Fact Sheet on Roberts," 1-4.
[135] "CORE Fact Sheet on Roberts," February 13, 1964, 1-4; Matthews, "PD Mouthpiece," 21.
[136] "CORE Fact Sheet on Roberts," 1-4.
[137] Matthews, "PD Mouthpiece," 21.

investigation" into the case.[138] He demanded that the officers be suspended during the pending investigation and that officers found guilty be "terminated from the force and prosecuted to the full extent of the law."[139] He also threatened to "wage a non-violent protest" in front of the Bronx police precinct for two days, unless their demands were met.[140]

Prosecutor Investigates Police Brutality: Grand Jury Dismissal

The local prosecutor opened a grand jury investigation into Roberts' police brutality claim, but failed to provide zealous advocacy. The grand jury was made up of a cross section of anonymous Bronx residents. In the confidential hearing, the prosecutor presented several witnesses concerning the search, arrest and brutality claim. Members of the jury heard all the witnesses for the police. The medical doctor who treated Roberts testified before the grand jury that his injuries "had to be from a very bad beating." Several other witnesses were present to testify on Roberts' behalf. The state claimed that the grand jury "did not choose to hear all the of Roberts' witnesses." But the state could have ignored their refusal and presented Roberts' witnesses in the grand jury anyway. By the end of the presentation, the grand jury voted no true bill, therefore, declining to indict the police of any crime. As far as Police Inspector Sexton was concerned, "the case was thoroughly investigated and handed to the grand jury which returned no bill." He told the *Amsterdam News* that Roberts' case against the NYPD was over.[141] CORE had failed to hold police accountable for abusing Roberts, not for their lack of trying, but because criminal procedure placed restraints on their activism, their access to the grand jury and thus the

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[138] Bronx CORE Letter & Memo From Herbert Callender, Chairman, To Governor Nelson Rockefeller, Mayor Robert Wagner, et al, February 13, 1964. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 4, Brooklyn Historical Society. [hereinafter Bronx CORE Letter & Memo to Rockefeller, February 13, 1964].
[139] Bronx CORE Letter & Memo to Rockefeller, February 13, 1964.
[140] Bronx CORE Letter & Memo to Rockefeller, February 13, 1964.
[141] Matthews, "PD Mouthpiece," 21.

reach of CORE's investigative activism.

Once the grand jury investigation into the police's misconduct ended, the state prosecuted the criminal matters relating to Roberts' auto theft claim and the unlawful search of his business. On December 11, 1963, Warme and his friend were acquitted of the auto theft following a trial in which only Detective Kilroy testified. However, the criminal case against Roberts ended less favorably one month later. On January 17, 1964, a jury in Bronx Criminal Court convicted Roberts. Although the judge suspended his sentence, Roberts suffered collateral damage. Eventually, the police's ulterior motives became apparent. Subsequent to the conviction, police subjected Roberts to threatening phone calls "warning him to leave the Bronx."[142] Vindictively, the NYPD sent letters to the landlord of the auto shop attempting to get Roberts evicted; they labeled him an "undesirable tenant based on his conviction."[143] Essentially, the police officers accused Roberts of committing crimes and performed ritualized violence on him because he was a Black entrepreneur. Their motivation was emblematic of a long history of lynching.

NYPD Shootings: CORE Investigates Puerto Rican Fatalities

Shortly after Bronx CORE completed their investigative activism into the Roberts beating, several Latino men were shot and killed by different NYPD officers. Puerto Rican leaders said police beatings and killings were "on the rise."[144] For example, in November 1963, police killed Maximo Solero and Victor Roderique following a street encounter in an upper Manhattan neighborhood that bordered Harlem. The chairman of the East Harlem Tenants Council, Hector "Ted" Velez, called for immediate protest demonstrations, but they had little

[142] "CORE Fact Sheet on Roberts," 1-4.
[143] "CORE Fact Sheet on Roberts," 1-4.
[144] *See* East Harlem Tenants Council leaflet, "Enough! Another Puerto Rican Slain" Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 8, Folder 13, Brooklyn Historical Society.

effect.[145] Three months later, an officer killed another Latino youth, Francisco "Frank" Rodriguez. The community considered him a conscientious citizen, and had awarded him the "Boy of the Year" in 1962.[146]

On the day of Rodriguez's death, probationary patrolman, Ronald Meszaros was drinking in a bar. While off-duty, Officer Meszaros spotted the eighteen year old quarreling with someone in the neighborhood. According to Bronx CORE's investigation, the policeman rushed out of the bar "with [his] gun drawn to break up the fight," but the officer wore plain street clothes and did not identify himself as he approached Rodriguez. In fact, CORE contended Meszaros "refused to show his badge and then he shot to kill[.]"[147] However, according to the police account, Rodriguez swung a clasp knife at Officer Meszaros, who then fired and fatally shot the youth. But media accounts reported that the officer first fired a warning shot and Rodriguez swung a clasp knife at him. The officer then shot the "fleeing youth" after he witnessed Rodriguez's "altercation with a friend."[148] Commissioner Michael J. Murphy made an appeal to the public expressing his disappointment. Murphy told the *New York Times*: "You have placed the policeman on the street. You have made the laws he enforced. You have armed him with a gun and the authority to use it for your protection. You must stand behind him when he is right."[149]

Subsequently, Bronx CORE organized a demonstration at police headquarters in lower

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[145] Ibid.; *see also* East Harlem Tenants Council, "Press Release February 23, 1964" Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 8, Folder 13, Brooklyn Historical Society.
[146] Albin Kreba, "A Funeral March with Lurking Hostility," *Herald Tribune*, February 25, 1964. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 8, Folder 13, Brooklyn Historical Society.
[147] East Harlem Tenants Council leaflet, "Enough! Another Puerto Rican Slain" Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 8, Folder 13, Brooklyn Historical Society.
[148] Kreba, "A Funeral March."
[149] "Backing up the Police," *New York Times,* February 25, 1964. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 8, Folder 13, Brooklyn Historical Society.

Manhattan and circulated a flyer entitled, "Stop Police Brutality" to advertise resistance efforts and structural abuse.

The circular provided details and facts related to several fatal shootings that police had "inflicted upon Negro and Puerto Rican" communities. For example, it mentioned details of Rodriguez's death by the hands of a "probationary policeman" who had been drinking before the encounter; two Puerto Rican youths, Solero and Roderique, killed on Manhattan's Upper East Side by officers who had "gone scot-free" because the NYPD transferred them to precincts in the Bronx instead of firing them; the Bronx policemen who wore KKK uniforms while tormenting Jesse Roberts; and the president of the Greenwich Chapter of the NAACP who police "severely beat while he tried to get medical attention at a local hospital." This flyer, and others like it, doubled as writing and resistance. CORE worked within the community and investigated claims that citizens made about random police stops, searches and abuse of power. The organization served as a community witness and reproduced several stories on flyers.

Here for example, the circular offered written details to resist narratives that minimized, justified and denied police violations of civil liberties and rights. This flyer constituted an important narration of Black and Puerto Rican suffering. With catchy and provocative phrases, CORE's text encouraged public participation in activist movements. It also offered corroboration in legal institutions. CORE distributed multiple copies, several of which went to public officials to demonstrate the frequency of police beatings, tortures, and blatant violations of civil rights and liberties. In turn, the NYPD rank and file considered these advertisements and ephemera as dangerous.

Following the funeral of the two Rodriguez boys, the chairman of the East Harlem Tenant's Council (EHTC) visited the 23rd precinct to discuss NYPD's reputation in the

community and the demonstration that took place in front of there. In the meeting, Chairman Velez asked if there was a "quota system for arrests[.]" As CORE chapter leaders had done, Velez complained about police planting evidence and stressed the need for an independent civilian-run police review board. A civilian-lead review board offered the best solution to the problem because people in the community were afraid to file complaints of police abuse within the existing system.[150] The NYPD offered no concession or sign of change. Following that meeting, EHTC reached out to the District Attorney's Office to demand a criminal investigation into the police for the murders. Although the number of fatality complaints were mounting, the District Attorney's Office did not respond to the EHTC with the same level of urgency as it had done with local chapters of CORE. The Brooklyn and Bronx chapters of CORE successfully advocated for grand jury investigations into the NYPD officers who fatally shot Morris Lewis and beat Jesse Roberts. In both cases, local chapters of CORE used unique investigative skills as activism to force prosecutors to investigate the police. The EHTC failed to use this type of activism to gain political resonance and influence accountability.

Leaders at Brooklyn CORE understood recent changes in the law had extended legal rights of criminal defendants. Advocates from the Brooklyn and Bronx chapters of CORE used the Supreme Court decision in *Mapp v. Ohio* to their advantage. *Mapp* regulated law enforcement behavior, requiring police to explain the grounds for conducting searches and seizures, which ultimately subjected their ulterior motives to public scrutiny. Whenever possible, CORE invoked citizens' rights under the new search and seizure law to pressure local prosecutors to examine police encounters with civilians more carefully. CORE leaders brokered

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[150] *See* "East Harlem Tenants Council Press Release" calling for the entire Negro and Puerto Rican community to unite and demand an immediate investigation of the killings of F. Rodriguez, M. Solero and V. Rodriquez. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 8, Folder 17, Brooklyn Historical Society.

meetings at District Attorney Offices under the guise that police should at least be held accountable under *Mapp*, and then presented to these prosecutors other complaints regarding police abuse of power, brutality and misconduct. From within these conferences, CORE's investigative activism acquired additional information concerning the police state and used it against the criminal justice apparatus. Leaders at EHTC never gained the same level of political resonance as CORE had achieved with District Attorney Offices, yet the organization managed to antagonize NYPD rank and file enough to warrant secret surveillance.

Decades after Brooklyn CORE's investigation of NYPD violations ended, Arnold Goldwag acquired records that revealed the NYPD had employed a separate force, the Bureau of Special Services (BSS), which had monitored Civil Rights organizations.[151] Unknown to CORE at the time, BSS officers secretly surveilled members of civil rights organizations and activists. BSS detectives kept reports on CORE and the EHTC, specifically Velez and his wife, Jane, who was also an activist.[152] Accordingly, a BSS officer was assigned to investigate EHTC and discovered Velez's plan for civil disobedience. In a BSS report, the assigned detective wrote that Velez had "called for Negro and Puerto Rican organizations to unite and demonstrate"; he also reported which individuals Velez expected to show up. He wrote that Velez anticipated "1,000 persons would come from New York's CORE, Downtown CORE, Mobilization for Youth and the Community Council on Housing.[153] The NYPD directly called each of the organizations to find out if such an inter-ethnic and multiracial demonstration would actually occur. Meanwhile, leaders at EHTC called upon all organizations to "Stop Brutality Against

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[151] According to Brian Purnell, he encouraged Goldwag to submit FOIA requests for his file with NYPD. Goldwag's estate left these records to the Brooklyn Historical Society.

[152] Detective Jack Barnathan, memorandum to Commanding Officer, February 22, 1964, Bureau of Special Services, "Protest Demonstration to Be Held at the 23rd Pct on February 23, 1964," 1. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 8, Folder 13, Brooklyn Historical Society.

[153] Barnathan, Memorandum, February 22, 1964.

Negroes and Puerto Ricans" and "Bring the Killer to Public Trial[.]" They planned the mass demonstration to take place on February 23, 1964. The EHTC also produced and distributed a leaflet entitled, "ENOUGH!! Another Puerto Rican Slain: Stop Police Killings Now!!" The creation and distribution of that flyer also upset NYPD officials. The captain of the 23rd Precinct referred to the organization as "the East Harlem Protest Pariah."[154] For over a month, police dedicated resources to investigate everyone involved in the distribution of the leaflets.[155]

Thomas Harrison Police Stop: CORE Witnessing and Activism

Police brutality continued to happen even out in the open for anyone to witness. Arnold Goldwag took copious notes on several of these occurrences. For example, in an internal Brooklyn CORE memorandum, Goldwag documented observing a violent police stop of a Black man, Thomas Harrison.[156] The encounter took place on December 15, 1963 at 3:30am while Goldwag and a few members were driving down Brooklyn streets when they noticed two policemen stop Harrison. In a Brooklyn CORE report, Goldwag wrote he saw Harrison "being kicked by a cop." CORE members exited the car to investigate and stop the assault. Consequently, Goldwag wrote a letter to the New York Police Commissioner, explaining that Mr. Harrison became "yet another victim of a brutal, unwarranted attack by the police." Thus, 1963 ended with CORE demanding another investigation and an end to departmental practices of police abuse.

Several local chapters of CORE expanded their strategies from the typical mobilization of

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[154] Captain Pearse Meagher, Commanding Officer of 23 Precinct, memorandum to Deputy Commissioner of Police Community Relations, March 25, 1964. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 8, Folder 13, Brooklyn Historical Society.

[155] NYPD, memorandum, Pearse Meagher, Captain, Commanding Officer 23rd Precinct, to Deputy Commissioner, Community Relations, "Supplementary Report RE Distribution of Leaflets" March 25, 1964. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 8, Folders 3-6, Brooklyn Historical Society.

[156] "Mr. Thomas Harrison," 81st Precinct, December 15, 1963. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 2, Brooklyn Historical Society.

masses for public protest to include a different, more offensive approach. Leaders from Brooklyn and Bronx chapters searched for leverage to achieve justice and encourage the state to press criminal charges against police by conducting their own investigations. CORE conducted their investigations on whether officers had properly identified themselves during encounters, objectively perceived a threat and responded reasonably when using force. CORE utilized unique forms of activism to preempt further injustice and uncover police misconduct whenever the state sought to protect its agents by denying wrongdoings--malicious intent and negligence--and shielding the truth. In this capacity as investigative activists, CORE not only challenged internal police investigations, but also provided counter narratives to what the press had reported as the "official" police version in a series of civilian-police contacts and excessive force claims. Furthermore, I contend CORE's investigative activism was essential to the anti-brutality protest movement, and to make a case that a pattern of police violence existed in the first half of the 1960s. This was contrary to the claim made by the NYCLU that its steady activism, along with NYPD reforms and the CCRB, had reduced the social problem--practically eradicating it by the late 1950s.[157] Yet in the early 1960s, Black New Yorkers and Puerto Ricans remained targets of police abuse and rather than just rely on the CCRB, people from both ethnic groups often turned to New York City chapters of CORE. CORE's investigative activism was crucial for these citizens to counterbalance the power of the mounting police state.

Conclusion

By mid-1961, the U.S. Supreme Court had stripped law enforcement of the authority to conduct warrantless searches, sanctioned local police forces for illegal seizures and, under

[157] George Barner, "Police Brutality Still A Problem," *New York Amsterdam News,* November 25, 1961, 1, quoting statement issued by George E. Rudquist, Executive Director of New York Civil Liberties Union. Digital Collection, Schomburg Center for Research in Black Culture, The New York Public Library.

precedent established in *Mapp*, extended the civil liberties for accused persons in local criminal court systems across the country. Precisely because of *Mapp*, New Yorkers experienced an immediate reduction of warrantless searches. Yet this landmark case did not end illegal search and seizure practices completely.

This chapter examined several tragic examples of post-*Mapp* police encounters, including search and seizure violations, and analyzed how these varied encounters put people at risk, while police officers avoided sanctions and even criminal prosecutions. Two years after *Mapp*, NYPD officers made warrantless entries into the homes of Jonny Ruiz and Clara Lewis as well as the business of Jesse Roberts. These illegal entries stood out because policemen beat Johnny Ruiz, killed Morris Lewis and metaphorically lynched Jesse Roberts. In addition, they demonstrated how police criminalized innocent people, including eyewitnesses, to shield themselves. Most of the victims and family members belonged to poor Black communities and large Puerto Rican ethnic neighborhoods. These invasions illustrate the ways NYPD officers crafted narratives to justify *Mapp* violations and routinely used the plain view doctrine to avoid judicial sanctions. Over time, this became a standard police practice and an effective legal exception. The majority of victims sought justice by getting major civil rights organizations involved, which caused activist leaders to investigate law enforcement and increasingly engage criminal justice forums. However, scholars of post-war civil rights movements and critical race theory have underexplored how these cases impacted civil rights activism and what they revealed about law and order developments and criminal justice at the time.

Anti-brutality activist and ACLU board member Varian Fry had long since examined the problem of NYPD officers using their firearms to kill and the various excessive force claims brought on by families of decedents in the late 1950s. "When [police] do kill someone, no court

takes jurisdiction," Fry explained. And when the Police Department investigated itself it typically ruled the killing was "justifiable homicide" and therefore they took no further action.[158] However, in the early 1960s CORE chapters as well as other community groups fought for change.

By honing in on CORE's independent investigations, this chapter expands understandings of CORE's activism as it related to punitive policing. Here, I argue CORE showcased democracy beyond nonviolent street protests. In the Lewis case, for example, Brooklyn CORE developed keen skills to investigate serious criminal charges and police violations of the Fourth Amendment. Strategically, leaders acted fast to prepare against a potential NYPD cover up of this fatal shooting. Their investigative work was activism because it allowed leaders to acquire information that included not only police records and evidence collected by the local prosecutor's office, but also evidence outside the scope of the state's investigation. Ultimately, with this unique investigative activism, combined with the threat of street protest, CORE forced the Brooklyn District Attorney's Office to open a criminal investigation against the police officers involved in Morris' fatality. Later, the Bronx local chapter of CORE used similar activism techniques, including citing legal constructs under *Mapp*, to force the local prosecutor to open a grand jury investigation into the unlawful police search and beating of Jesse Roberts. In both cases, grand juries refused to accuse the police of a crime. In criminal court, Clara's case was dismissed, but a jury later convicted Roberts. Simultaneously, the Lewis family launched an unprecedented civil suit, requesting almost a million dollars in damages, which the NYPD and local law enforcement officers settled.

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[158] Letter to Robert E. Garst, Assistant Managing Editor, *New York Times*, October 12, 1959, 1-2; *see also* unsigned letter to New York Times editor, referring to article, "Two Wounded in Chase of Fleeing Gunman," *New York Times*, October 1959. American Civil Liberties Union Records, MC #001, Box 1075, Folder 3, "Failure of Police Protection; brundage, M.R. "Slim"-Ne 1959.

As 1964 approached, law enforcement continued violating Fourth Amendment rights, in brazen disregard for *Mapp*. The more CORE and other activists used innovative techniques to fight police misconduct and brutality, the more law enforcement pushed back. Police targeted activists and other protesters in local civil rights movements. In particular, activists became increasingly fed up because of police behavior at CORE demonstrations, protesting candidates for the 1964 presidential election. Police had deliberately injured nine CORE members at two separate demonstrations in Manhattan.[159] Consequently, NYPD officials and political leaders worked together to develop more punitive policies to maintain law and order. These new initiatives made communities of color more vulnerable. Scholar Charles Ogeltree, who studied countless brutality cases and civilian fatalities caused by the police, determined that "race, police, and violence are as one in this country."[160] After examining the history of police-minority relations, Olgeltree concluded that police misconduct and "daily incidents of police use of excessive force" were inextricably connected to images of African Americans.[161] In the next chapter, I explore the New York Governor's push for the nation's most novel stop-and-frisk and no-knock laws amidst a hidden agenda. I further explore how CORE leaders and Black communities mounted vigorous struggles, and how local media constructed fictitious stories of Black youths who kill local White merchants and police.

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[159] Press Release, "Police Brutality," November 12, 1963. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 4, Brooklyn Historical Society.
[160] Charles J. Ogletree, Jr., Mary Prosser, Abbe Smith and William Talley, JR prepared an investigative report for the Criminal Justice Institute at Harvard Law School for the NAACP. "Beyond the Rodney King Story: An Investigation of Police Conduct in Minority Communities" (Boston: Northeastern University Press, 1995), 10-11.
[161] Ogletree, "Beyond the Rodney King Story."

CHAPTER FIVE

"NEW TOOLS AND FRESH EFFORT": ORIGINS OF NEW YORK'S STOP-AND-FRISK LAW

On the morning of January 8, 1964, the 49th governor of New York, Nelson Aldrich Rockefeller, presented his Annual Message to members of the state legislature. This was Rockefeller's first public legislative push to alter law enforcement surveillance tactics and create a foundation for New York's first stop-and-frisk and no-knock bills. Before introducing these new initiatives, Rockefeller called the time "a somber moment in the history of our state and our nation."[1] It had been less than two months since President John F. Kennedy's assassination. Rockefeller used this "unspeakable national tragedy" to remind the legislators of their duty to protect the 17 million men, women, and children of New York. "The safety of the individual—in his home, in the streets, the parks or wherever he may be—" Rockefeller expressed, "is the prime responsibility of government at every level."[2] He expressed deep concerns for civilian safety and the professional police officer. He quoted from the recent United States Crime Index that reported crime had "increased at a rate four times the rate of growth in population" since the previous decade. While he admitted that such an alarming rate was not the trend in New York, Rockefeller insisted crime was still "deeply disturbing."[3] Oddly, he did not cite crime rate

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[1] Nelson A. Rockefeller, Annual Message to the Legislature, January 8, 1964, in New York State, Public Papers of Nelson A. Rockefeller, 17–18 (1964). NAR Collection, "Annual Message," Folder 105, Box 2, Series 27, Record Group 15; Folder 64, Box 1181, Series 33, Rockefeller Gubernatorial Records, Rockefeller Archive Center, Sleepy Hollow, New York. [Hereinafter "Annual Message 1964"]

[2] Annual Message 1964, 17.

[3] In the markup of the press copy for Governor Rockefeller's Annual Message, Rockefeller added the phrase, "deeply disturbing" and emphasized it. "Annual Message--Executive Chamber--Draft 4," Albany, January 8, 1964,

statistics for the state or major urban areas such as New York City. Nonetheless, he declared a "war on crime" in New York, with twin targets: "organized and unorganized crime."[4] Rockefeller stated that "not only vigilance but *new tools* and *fresh efforts,*" would be required to win this war, and his Annual Message included a blueprint for both.[5]

Rockefeller called for "a statewide information sharing system" that used modern electronic techniques and a computer database system "to provide speedily, complete and accurate information essential to the investigation and prosecution of crime and the administration of criminal justice."[6] His second step sought to "insure that able and dedicated professional law enforcement officers are attracted and retained in the public service."[7] As a third initiative, Rockefeller asked the legislature to introduce, by statutory development, "a modern pre-arraignment criminal procedure" to protect both "individual liberties . . . [and] assure that law enforcement officials [had] effective means of investigation and prosecuting crime."[8] He invited the legislature to alter the state's existing criminal procedure laws which included carving out an exception to recent judicial rulings of federal courts, and creating stop-and-frisk as well as no-knock to further empower police. His instructions to the legislature would govern police behavior prior to an arrest as well as judges' considerations for pre-arraignment procedures.

In practice, Rockefeller's proposed stop-and-frisk authorized New York police officers to stop, question and frisk citizens without a warrant or probable cause as required by the Fourth

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NAR collection, Folder MW; Letter from John L. Moore To Hugh Morrow, 10 January 1964, "Annual Message", Folder 64, Box 1181, Series 33, Rockefeller Archive Center, Sleepy, Hollow, New York.

[4] "Annual Message 1964", 17; "'Stop, Frisk?' Yes, Says Policeman," *Newsday*, March 17, 1964, 28.

[5] "Annual Message 1964", 17.

[6] "Annual Message 1964", 10.

[7] "Annual Message 1964", 10.

[8] "Annual Message 1964", 10.

Amendment to the U.S. Constitution. At the time, neither Rockefeller nor the legislature defined the term "frisk," but in police parlance it meant a cursory search of an individual, which generally includes feeling the outer clothing and is not a full blown search. Knock-knock (more commonly referred to as "no-knock") required a search warrant but permitted police to break into a home, dwelling or structure without first knocking and giving the occupant notice before police entry.

This chapter explores the complex and often contradictory motivations that led Governor Rockefeller to support state surveillance and police search and seizure powers through criminal procedure laws such as stop-and-frisk and no-knock. Previous chapters traced the development of the Fourth Amendment and police search and seizure practices that led up to the landmark decision in *Mapp v. Ohio*.[9] The plaintiff, Dollree Mapp, a woman of color and single parent, challenged the warrantless police search and seizure from multiple levels in the criminal justice system until her case reached the Supreme Court, causing law enforcement officials, prosecutors, defense attorneys, civil liberty organizations and activists across the nation to wait anxiously for the decision.[10] At that time, no one could have expected the extent that Mapp's police encounter in Ohio would have had on New Yorkers and the state's support for punitive criminal procedure laws.

Law enforcement officials held negative views of the landmark decision and sought stop-and-frisk and no-knock laws as legislative means for *Mapp*'s reversal. New York City Police Department (NYPD) leadership also had a hidden agenda as they wanted to regulate police rank and file in the streets. Several scholars argue that law enforcement bureaucrats lobbied for stop-

[9] Mapp v. Ohio, 367 U.S. 643 (1961).

[10] "Landmark Decision," *Cleveland Press,* June 21, 1961, Cleveland State University, Michael Schwartz Library, Special Collections.

and-frisk laws to gain greater control over day-to-day police practices and, as a consequence of these lobbying efforts, courts began to recognize police professionalism and defer to their field investigation experience, which decreased the regulatory effects *Mapp* had on police. While it is true police leaders sought stop-and-frisk and no-knock to regulate officers, I argue that the laws originated as a reaction to *Mapp* and subsequent liberal Supreme Court decisions that expanded criminal defendant rights. I theorize that the antagonism towards *Mapp* directly influenced Governor Rockefeller who found in their complaints a personal political opportunity. Rockefeller ultimately folded these concerns within his aggressive agenda to reform criminal justice and police training methods. In response, his annual message called for a "war on crime" and "new tools and fresh efforts," such as a "pre-arraignment criminal procedure," that ultimately served as the foundation for the stop-and-frisk legislation that New York legislature later passed.[11] These laws restructured New York's Code of Criminal Procedure, increased police search and seizure rights and gained national and international attention.

This chapter also analyzes why Black leaders and civil rights organizations such as the National Association for the Advancement of Colored People (NAACP) and Congress of Racial Equality (CORE) reacted so critically to the passage of the 1964 law.[12] Before the legislature passed stop-and-frisk, police had repeatedly targeted Black communities for arbitrary stops as well as warrantless searches of homes, businesses and Black Muslim mosques all in violation of *Mapp's* extension of Fourth Amendment protections. Previous chapters conducted a close analysis of various cases in which citizens challenged law enforcement violations of their

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[11] Annual Message, 1964.

[12] In the previous year, the American Civil Liberties Union (ACLU) had also raised concerns about states relaxing the "probable cause" standard for police to make a search and arrest. See report by Paul Bender, University of Pennsylvania Law School, entitled, "Comment on the Uniform Act," 5. ACLU Records MC 001, Box 1078, Folder 8, Sealy Mudd, Princeton University Library.

federally guaranteed rights. In this chapter I consider the different ways members of Black communities viewed Governor Rockefeller's anticrime proposals, specifically stop-and-frisk, and no-knock.

Malcolm X surmised the new laws were connected to the momentum of the civil rights movement. He considered the concurrent nature of pro-rights laws and pro-policing laws. On July 5, 1964, just days after the law went into effect, Malcolm X chaired a meeting on a new movement, the Organizations of Afro-American Unity (OAAU), where he opined on New York's new criminal reform laws and the Civil Rights," saying:

> At the same time . . . so much hullabaloo was being made over this new civil rights legislation, a bill went into effect, known as the no-knock law or stop-and-frisk law, which was an anti-Negro law. They make one law that's outright against Negroes and make it appear that it is for our people, while at the same time they pass another bill that's supposedly designed to give us some kind of equal rights.[13]

For Malcolm X, there was no mystery New York enforced stop-and-frisk and no-knock laws, authorizing police great powers simultaneous to the Civil Rights Act of 1964, granting equality rights to all citizens.

Crime in NYC: Misleading Rates and Ignored Communities

While presenting his anti-crime proposal, Governor Rockefeller asserted these laws would protect New Yorkers from rising local violence; however, research on criminal statistics suggest that violent crime had not begun to peak, and would not until after the enactment and enforcement of these laws. When Rockefeller made this proposal, violent crime showed relatively low rates just as it had in the 1950s, and New York's crime rate was comparatively

[13] Malcolm X Speech, the Second "Organizations of Afro-American Unity" (OAAU) Rally, July 5, 1964. For more on the OAAU's community organizing, see my article "Harlem is the Black World: The Organization of Afro-American Unity at the Grassroots," *The Journal of African-American History* 100.2 (Spring 2015): 199–225.

better than the alarming national rate.[14] At the time, sociologist Harry Manuel Shulman's research questioned local and national crime reporting. Schulman had served as First Deputy Commissioner of Corrections in New York City and was a consultant on criminal statistics to the Office of Statistical Standards in the U.S. Bureau of the Budget. After studying crime in New York and national crime statistics for over thirty years, Shulman presented his research at the International Congress of Criminology in Montreal, Canada, on September 3, 1965. He criticized America for depending too heavily upon police statistics for its national measure of crime by explaining how their methods "failed to capture the full range of offenses" and made measuring crime difficult.[15] He examined crime statistics reported by other agencies and found those statistics problematic as well because no comprehensive or coordinated body existed to collect and measure national crime statistics. Instead, crime statistics were compiled by various agencies that failed to provide "an accurate statistical base for the volume, categories and trends of crime in the nation."[16]

Recent scholarship reveals that recorded violent crime in New York City, such as robberies and burglaries, began to rise just after 1964 and skyrocketed "from a combined total of 48,000 [police recorded incidents] in 1965 to 143,000 the following year."[17] Notably, this threefold increase occurred only after these laws went into effect indicating that the origin of stop-and-frisk and no-knock was not an already soaring violent crime rate. Historian Elizabeth

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[14] Christopher Jencks, "Is Violent Crime Increasing?," *The American Prospect*, December 4, 2000, http://prospect.org/article/violent-crime-increasing. Themis Chronopoulos, "Police Misconduct, Community Opposition, and Urban Governance in New York City, 1945-1965". *Journal of Urban History*. 2015.1-26, p 4. Chronopoulos provides a chart on the "Number of Serious Crime Complaints in New York City, 1944-1966," Figure 2, based on NYPD Annual Reports 1944-67, which show crime rate level between 1960 and 1964 was roughly the same as it had been between 1951-1955.

[15] Harry Manuel Shulman, "Measurement of Crime in the US," *Journal of Criminal Law, Criminology, and Police Science* 57, no. 4 (December 1966): 483.

[16] Shulman, "Measurement of Crime in the US," 483.

[17] Elizabeth Kai Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge: Harvard University Press, 2016), 6.

Kai Hinton argues that the high crime rate in the mid-1960s had not resulted from an actual increase in crime.[18] Rather, the crime rate appeared to rise because of "developments in crime statistics, new technology of knowledge production, and early federal law enforcement measures." She further contends that these changes skewed perceptions of increasing violent crime, when actually the changes correlated directly to crime reporting reforms later implemented by Mayor John Lindsay.[19] In addition to skewed statistics, even the mainstream media reported uncorroborated threats of Black violence, following Rockefeller's claim that stop-and-frisk and no-knock were needed to prevent violent crime.[20]

In this chapter, I consider what motivated Governor Rockefeller to change criminal procedure laws. Between Rockefeller's gubernatorial election in 1958 and his third attempt for the Presidential nomination in 1968, his position on criminal justice, particularly on street crime and narcotics, shifted from liberal to conservative, rehabilitative to toughness.[21] I argue Rockefeller's support for stop-and-frisk, no-knock and crime bill in 1964 had more to do with gaining conservative support for his presidential bid. Several conservatives considered Rockefeller, a liberal Republican, a "villain for the GOP Right."[22] Rockefeller signaled to the conservative base he was anti-*Mapp* because the Supreme Court decision confused police about search and arrest authorities and put them in danger. During his presidential campaign,

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[18] Hinton, *From the War on Poverty to the War on Crime*, 6.

[19] Hinton explains the sharp rise in crime was caused by a change in federal funding policy. After 1966, federal policymakers intervened in what had been--for two centuries in American law enforcement history--a state and local matter. Thus, she writes, "Many previously hidden crimes suddenly came to light as reported crime rates determined the extent of national crime control funding." Hinton, 6.

[20] Douglas Dales, "Rockefeller Signs Bills Increasing Powers of Police," *New York Times*, March 4, 1964.

[21] Scholar Marilynn S. Johnson provides a comprehensive history of the NYPD, protests against brutality, and particularly during the early 1960s, efforts by the Patrolmen's Benevolent Association to prevent a Civilian Complaint Review Board. However, Johnson overlooks Rockefeller's criminal justice policies which reformed penal laws to increase police powers and limit citizens' Fourth Amendment protections in courts. Marilynn S. Johnson, *Street Justice: A History of Police Violence in New York City* (Boston: Beacon Press, 2004), 229-234, 286.

[22] Michael Kramer and Sam Roberts, *I Never Wanted to be Vice-President of Anything!: An Investigative Biography of Nelson Rockefeller* (New York: Basic Books, 1976), 5, 273.

Rockefeller revealed, "I sponsored 'stop and frisk' laws to clarify the powers of police officers in dealing with potentially dangerous suspects; An arresting officer must not be burdened with doubt as to the extent of his authority if his duties are to be properly performed."[23] After *Mapp,* just as before the decision, NYPD officers and law enforcement officials used criminal laws to quell complaints and criminalize civil rights protests. After *Mapp*, Rockefeller used anti-Mapp sentiments as a cover to justify changing penal laws and expanding police search and seizure powers through stop-and-frisk and no-knock. But since crime was not rising at the time, Rockefeller exploited people's anxieties of crime and danger justify the new laws. He used anti-Mapp views and stop-and-frisk law for political currency to build support for his presidential bid in 1968.

The emergence of stop-and-frisk and no-knock laws overlapped a period when illegal drug use dramatically rose in Harlem, Bedford Stuyvesant and other neighborhoods with large minority populations in New York City. During the early half of the 1960s, Rockefeller, New York City's mayor and local law enforcement leaders paid little attention to the local drug problem Black communities. This inattention created a paradox for Black and Puerto Rican New Yorkers to handle on their own. They had to figure out how they would invite police into their communities to combat drug-related crime, but also prevent police misconduct.

Oberia Dempsey: A Leading Voice for Fortner's Black Silent Majority

Urban studies scholar Michael Javen Fortner argues that a majority of Black people supported punitive laws that expanded police powers in order to combat street crime within New

[23] "The Crime Statement," State of New York Executive Chamber, June 28, 1968, 1, 5; see "Major Legislative Achievements—1962—Summary" and "An Act to Amend the Code of Criminal Procedure in Relation to Return of Property and Suppression of Evidence Obtained as a Result of Unlawful Search and Seizure," April 29, 1962. Rockefeller Archive Center, Series III, NAR Group, 1517 Box 26, Folder 146.

York City communities, and that this support helped to produce mass incarceration.[24] To support these claims, Fortner highlights Black struggles with drug-related crime in New York City as well as other urban areas during the 1960s and 70s. Fortner also documents several Black leaders who expressed concern about the social impact of drugs and street crime. He cites, for example, Hulan Jack, the assemblyman from Harlem, who wrote in the early 1960s that "society has denied the youth of Harlem a chance to live as a normal citizen."[25] Speaking before the State Joint Committee on Crime in 1969, Jack said that Harlem had morphed into a "breeding ground for crime . . ." and he urged its citizens, particularly their leaders, to "impress upon the police department its desire and its willingness for that department to invoke severe and extraordinary efforts in order to make Harlem safe at least for its own citizens."[26] Ultimately, Fortner argues that

> For years the [B]lack silent majority had been pleading for white officials to wage a war on drugs. For years they described addiction as enslavement and a spreading disease. Rockefeller's rhetoric simply followed rather than led . . .[27]

According to Fortner, it was a silent majority in the Black community, and not Rockefeller or New York's law enforcement regime, who wanted to reduce civil liberties for defendants in criminal courts, increase police search and seizure powers and punish lawbreakers more harshly. Fortner blames conservative styles of law and order policing such as stop-and-frisk and no-knock on this underappreciated silent majority. He argues this Black silent majority's "greatest legislative victory" was the Rockefeller drug laws of the 1970s, but he also suggests they

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[24] Michael Javen Fortner, *Black Silent Majority: the Rockefeller Drug Laws and the Politics of Punishment* (Cambridge: Harvard University Press, 2015).
[25] Fortner, *Black Silent Majority*, 34-35.
[26] Fortner, 34-35.
[27] Fortner, 191. Fortner takes the idea from Daniel Patrick Moynihan, President Nixon's former assistant secretary of labor, who in 1970 first coined the term, "silent [B]lack majority," to reference middle--class Black people who were "politically moderate" and concerned about "antisocial behavior." "Text from the Moynihan Memorandum on the Status of Negroes," *New York Times*, March 1, 1970, 69; "Rights Leaders' Statement on Moynihan," New York Times, March 6, 1970, 27.

supported Rockefeller's 1964 crime bill, an antecedent to the Rockefeller drug laws, a decade earlier.

Fortner departs from the scholarship on the post-war civil rights movement and Black American challenges with police brutality and unreasonable searches. Historian Khalil Muhammad calls Fortner's work "severely flawed" because it locates "the origins of the war on drugs with hard-working, respectable [Black] Americans" and aligns them "with resurgent white conservatives intent on imposing a new racial order." [28] In addition, Martha Biondi's history of postwar New York City recounts how Black residents mobilized in various campaigns to hold police accountable for excessive force and systemic violations of citizens' rights in Black neighborhoods.[29] Biondi further concludes this collective activism, which also included advocacy for greater Fourth Amendment protections decades before the *Mapp* decision, "changed the social, political and cultural landscape of New York City."[30] In *The Condemnation of Blackness*, Muhammad illustrates Black anti-crime attitudes and expressions of punitiveness had deeper roots in America, but that members of the working class and elite in the segregated Black communities of the urban North balanced these sentiments against the "hidden cost to [B]lack residents" that often involved "brutality by bad police officers and the loss of faith in American society by the young and old, who saw the police as a representation of the government's malign neglect of [B]lack people in general.[31] Both Muhammad and Biondi find that Black urbanites across class distinction had challenged unjust policing since the end of

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[28] Khalil Gibran Muhammad, "Black Silent Majority: The Rockefeller Drug Laws and the Politics of Punishment By Michael Javen Fortner." *New York Times Book Review* 120, no. 39 (September 2015): 14-14.
[29] Martha Biondi, *To Stand and Fight: the Struggle for Civil Rights in Postwar New York City* (Cambridge: Harvard University Press, 2003), 15, 287.
[30] Biondi, 272.
[31] Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America*. (Cambridge: Harvard University Press, 2011):11.

Reconstruction and throughout the long Civil Rights Movement. I argue struggles continued throughout the 1960s, as this Black majority sought to protect the liberties they had gained in the criminal justice system and advance civil rights.

There was no silent majority of Black people who supported punitive laws, a reversal of the *Mapp* decision, or increasing police search and seizure powers to combat crime. Members of Black communities had always understood from the "convict-leasing era, the lynching epoch and decades of Jim Crow repression," according to Khalil Muhammad, that "punishment was never meant to serve [B]lack interests and mostly underwrote their oppression."[32] Fortner fails to provide data to quantify this majority, and the polling survey he relies on does not fully capture Black public opinion during the 1960s.[33] Fortner accepts Moynihan's premise and borrows this conceptual idea of a "silent majority," but applies it to a class and moral based model. He also departs from Michael C. Dawson's theory of "linked fate" to explain how middle-class Black Americans and poor Black people understand their material interests and obligations to each other because they share a common history of racial discrimination.[34] By emphasizing morality and class cleavages, Fortner argues Black people tended to "differentiate between "us" and "them," between "decent families" and street families."[35] "Decent families," he further claims,

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[32] Muhammad, "Black Silent Majority," 14.

[33] For example, Fortner uses a *New York Times* poll from late 1973, purporting that "71 percent of [B]lack respondents favored life sentences without parole for [drug] pushers." Fortner, 198-199, note 31. Here the real source for the statistics derives from one of Governor Rockefeller's chief executive advisors. "Memo from Hugh Marrow to the Governor," January 9, 1973, Folder 347, Box 31, Series 21.2, Rockefeller Gubernatorial Records, Rockefeller Archive Center, Sleepy Hollow, New York. In addition, Fortner's relies heavily on this memo and conducts no independent analysis, he does not account for the sample size or provide the poll's racial breakdown. He also leaves a major methodological question unanswered: do the Black interviewees adequately represent the political diversity of New York City's large Black population?

[34] Michael C. Dawson, *Behind the Mule: Race and Class in African American Politics* (Princeton: Princeton University Press, 1994).

[35] Fortner, 14.

"do not believe that their fate is linked with the fate of "street families."[36] But the history of housing segregation forced the Black middle-class and poor to live together in overcrowded Black neighborhoods in the urban north. This chapter illustrates when it came to street crime, police brutality and criminal injustice Black people in New York City shared common concerns in these areas irrespective of class.

Heroin in New York City

After World War II, American-Sicilian Mafia began trafficking heroin into New York.[37] The mafia peddled the drugs primarily in Italian neighborhoods, such as the South Village.[38] The years 1953 to 1955 witnessed a sharp rise in the rate of juvenile male addiction.[39] But by the end of the decade distribution patterns had changed, causing heroin to become more difficult to purchase in the Village.[40] Members in the mafia ceased trafficking heroin in Italian neighborhoods. Addicts went searching for drugs in other parts of the city, the Lower East Side or uptown, in East Harlem or Harlem.[41] By the late 1950s, heroin became widely available in

[36] Fortner, 14.
[37] It was cultivated in Turkey, manufactured and processed by pharmaceutical companies in Italy or chemical laboratories in Marseille, France. The mafia smuggled the narcotic into New York. David T. Courtwright, *Dark Paradise: A History of Opiate Addiction in America* (Cambridge: Harvard University Press, 2001), 148.
[38] Courtwright, *Dark Paradise*, 148;
[39] Courtwright, *Dark Paradise*, 148; Daniel Wolf, "Delinquency in the Village," *Village Voice*, November 27, 1957, 1; "Crowd Overflows Pompeii Hall to Hear Narcotics Official, Others," *Village Voice*, January 15, 1958, 1; Eva Rosenfeld, *The Road to H: Narcotics, Delinquency, and Social Policy* (New York: Basic Books, 1964), 45.
[40] Village Aid and Service Center Preliminary Study of Caseload of Village Residents, May 1, 1963, Fales Library and Special Collections, The Judson Memorial Church Archive, New York University Libraries.
[41] Courtwright, *Dark Paradise*, 148; Wolf, "Delinquency in the Village," 1; "Crowd Overflows Pompeii Hall to Hear Narcotics Official, Others," 1; Rosenfeld, *The Road to H*, 45.

New York City and began to take a devastating toll on Black communities in Manhattan, the Bronx, and Brooklyn.[42]

During the early 1960s, the radical Black press exposed a sharp increase in narcotic use and related street crime in Black communities, which residents complained that government officials had overlooked and NYPD officers failed to adequately police.[43] Consequently, locals prioritized this as a problem and waged their own citizen's war against the heroin epidemic that had developed in New York City.[44] In this fight, one Harlem leader, Oberia David Dempsey, known as a fearless minister who carried a gun, lead the early crusade against drugs and helped Black communities publicize the social problems related to drugs.[45] Dempsey worked with several influential Black pastors and rose to become the first vice president of Brooklyn's

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[42] Eric C. Schneider, S*mack: Heroin and the American City*. (Philadelphia: University of Pennsylvania Press, 2008) 66-74; Courtwright, *Dark Paradise*, 148; Daniel Wolf, "Delinquency in the Village," *Village Voice*, November 27, 1957, 1; "Crowd Overflows Pompeii Hall to Hear Narcotics Official, Others," *Village Voice*, January 15, 1958, 1; Eva Rosenfeld, *The Road to H: Narcotics, Delinquency, and Social Policy* (New York: Basic Books, 1964), 45.

[43] Rose L.H. Finkenstaedt, "Narcotics in the Ghetto: Neo-colonialism at Home," *Liberator Magazine*, March 1963, 12-14; Sylvester Leaks, "Who Profits from Narcotics? The Living Death," *Muhammad Speaks*, December 18, 1964, 20.

[44] The Federal Bureau of Narcotics released statistics on "active narcotic addicts" in the United States for 1960 and found that there were 25,552 Black "active addicts," 56.9 percent of the total. See "Active Narcotic Addicts Reported in the United States as of December 31, 1960" *Federal Bureau of Narcotics*. The Black press, however, reported more startling figures, estimating that 100,000 drug addicts lived in New York City. Sylvester Leaks, "Who Profits from Narcotics? The Living Death," *Muhammad Speaks*, December 18, 1964, 20. Black community leaders estimated "more than 50,000 addicts were in Harlem alone." Rose L.H. Finkenstaedt, "Narcotics in the Ghetto: Neo-colonialism at Home," *Liberator Magazine*, March 1963, 12-14; Sylvester Leaks, "Who Profits from Narcotics? The Living Death," *Muhammad Speaks,* December 18, 1964, 20. Based on their perception, one out of four people in Harlem were addicts. During the early 1960s Harlem became known as "the headquarters for narcotics" because of the sheer number of drug addicts and traffickers. Sylvester Leaks, a special correspondent for *Muhammad Speaks*, reported on the dehumanizing drug trade, writing, "the casual observer w[ould] be amazed, traveling these routes, at the liberty with which this nefarious traffic operates . . . It is as though a conspiracy exists to make every black man, woman and child in Harlem a junkie." Leaks, "Who Profits from Narcotics?," 20. Community leaders considered the large addict population as evidence of a "dope plague." Yet the contrast between national statistics and local perceptions illustrated how seemingly unaware the government was of the drug problem in Harlem.

[45] For more background on Dempsey see Fortner, 98-112, 184; "He Really Declares War on Dope," *New York Amsterdam News*, June 19, 1965, 6; Malcolm W. Brown, "Pastor Organizes Militia to Combat Crime in Harlem," *New York Times*, October 21, 1967, 33; Dope Ring Threatens to Kill Rev. Dempsey as Police Net Narrows," New Pittsburgh Courier, September 26, 2964, 1.

NAACP chapter.[46] While part of the ministerial staff at Abyssinian Baptist church, lead by Congressman Adam Clayton Powell, Jr., Dempsey worked on various community concerns.[47] For example, he organized a voter registration drive in Harlem, and invited governor Averell Harriman and Rockefeller to speak to the community.[48] Additionally, Dempsey served on a panel to discuss violence and crime where the central question was whether church activity should include anticrime crusades.[49] He quickly emerged as a leader of an early crusade against drugs in Black communities and publicized other social problems related to drug crime.

Following the *Mapp* decision, drug arrests in New York decreased, causing Dempsey to ask Harlem residents to "join the war on dope."[50] In early 1962, he founded the Upper Park Avenue Baptist Church on 125th Street in Harlem and established the Anti-Narcotic and Anti-Crime Committee of Harlem.[51] Before this committee, the drug epidemic in Harlem attracted little attention from Federal, State or City governments. But Dempsey used his committee to engage the community in public talks and press conferences from 1962 to 1973. It was during the election season of 1963 when Dempsey attracted the attention of several prominent politicians, including Governor Rockefeller. President John F. Kennedy invited Dempsey, along with other New York City ministers, to a conference on the drug epidemic and promised to issue

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[46] "Sweeps Winner," *New York Amsterdam News*, November 6, 1954, 21.NYPL Schomburg Center.
[47] "Rev. Dempsey Gets New Post at Abyssiania," *New Journal and Guide*, October 15, 1955, 21. NYPL Schomburg Center.
[48] "Rev. Dempsey Is Mayor of Harlem," *New York Amsterdam News*, October 31, 1959, 1; "Ave and Rocky Coming Back October 5," *New York Amsterdam News*, September 27, 1958, 34.
[49] "Launch Crusade on Foul Mouth Hoodlums," *New York Amsterdam News*, November 28, 1959, 5.
[50] Oberia Dempsey, "Dope Battle 'Lost': The War Goes On," *New York Amsterdam News*, November 2, 1968, 10. Dempsey frequently wrote letters to editors and a column in the *Amsterdam News* under the tagline, "Dope Battle 'Lost;' The War I still On."
[51] "Powell will Open Dempsey's New Church," *New York Amsterdam News*, November 18, 1961, 3; "Church Establishes Citizens Committee To Halt Muggings," *New York Times*, April 21, 1962, 19.

a report.[52] The Kennedy administration never issued the report, later Dempsey criticized government inaction: "A government is supposed to protect the people it governs . . . I don't understand President Kennedy. I don't understand how an intelligent man can let this go on."[53] The Harlemite routinely discussed local crime in the press and believed New York City's drug problem was the cause of "90 percent of the crime in the city."[54] Dempsey suggested the solution was to "take the junkies off the street and put 'em in camps."[55] Next, he wanted the NYPD to have greater search powers to address crime throughout Harlem and New York City.

Dempsey disapproved of *Mapp,* contending that the Supreme Court's ruling had limited law enforcement search and seizure powers, which he claimed had caused an explosion of crime and which offered Governor Rockefeller a compelling narrative for the need of a stop-and-frisk law in Black communities. Two years after this ruling, Dempsey advocated in the media for greater police stop-and-search powers. "If anything," Dempsey said to the *Amsterdam News*, "the police are hampered in their fight against addiction and peddling by the lack of "search and seizure" powers which would enable them to swoop down immediately on suspected hop [heroin] pushers and users."[56] Later in a local television broadcast Dempsey appealed "to state and federal lawmakers to pass a measure to give law enforcers power to seize and search drug suspects."[57] Dempsey's launch of the citizen's war against drugs created opportunities that worked to the advantage of Rockefeller's justification. Simultaneous with Dempsey's outcries, Rockefeller and leaders from New York's law enforcement regime also developed arguments to

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[52] Finkenstaedt, "Narcotics in the Ghetto," 12-14. NYPL Schomburg Center.
[53] Finkenstaedt, 12-14.
[54] *Miami News,* January 7, 1969, 6A.
[55] *Miami News,* 6A.
[56] "Dempsey 'Whitewashes' Police," *New York Amsterdam News,* March 2, 1963, 3.
[57] "Dempsey 'Whitewashes' Police," 3.

advance public support for the new stop-and-frisk law. However, Dempsey's views on search and seizure and his push for punitive laws against drug abusers and criminals did not represent the majority of Black New Yorkers or speak to their anxieties about New York's stop-and-frisk and no-knock laws.

Dempsey reflected a minority view that was a last resort to address the drug epidemic and street crime that local police had failed to combat. His position ran contrary to several Black residents and leaders from civil rights organizations who launched protest movements against stop-and-frisk and police abuses. Fortner quotes Dempsey, who offers a critique of the civil rights activist: "Sure, the [American] Civil Liberties Union and the N.A.A.CP would howl about violation of constitutional rights," Dempsey says, "But we've got to end this terror and restore New York to decent people. Instead of fighting all the time for civil rights we should be fighting civil wrongs."[58] Here, Dempsey acknowledges the protest efforts of two major civil rights organizations that a majority of Black New Yorkers turned to for redress. These groups along with the Congress of Racial Equality, organized civil disobedience within Black communities to fight Rockefeller's new search laws and NYPD practices.[59] This history refutes Fortner's claim that a Black silent majority supported Rockefeller's early punitive criminal procedure laws, which provided a stable foundation of support for the Rockefeller Drug laws of 1973.

Law Enforcement Lobby for Stop-and-Frisk

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[58] Homer Bigart, "Middle-Class Leaders in Harlem Ask Crackdown on Crime," *New York Times* December 24, 1968, 25.

[59] For more complete coverage of the direct action efforts by CORE's Brooklyn chapter, the most active affiliate in New York City, see Brian Purnell, *Fighting Jim Crow in the County of Kings: The Congress of Racial Equality in Brooklyn* (Lexington: University Press of Kentucky, 2013).

In July 1961, just one month after the Court's decision, Governor Rockefeller met with top law enforcement organizations, including several officials from District Attorney Associations to discuss *Mapp*.[60] Richard H. Kuh, a strong voice for conservative law enforcement, was present.[61] At that time, Kuh held a number of prominent positions, including Administrative Assistant to the New York County District Attorney; Secretary of the State District Attorney's Association, an organization that lobbied the state legislature on behalf of elected District Attorneys; and the Coordinator of the Combined Counsel of Law Enforcement Officials, which represented the major law enforcement agencies in the state.[62] Kuh and other police administrators saw the stop-and-frisk statute as a legal strategy to counter *Mapp* and to gain control over patrol officers. Ideologically, Kuh aligned with top law enforcement officials, who wanted to tighten their control over the police rank and file. Other police departments throughout the country spoke out against the Court's ruling. Los Angeles Police Department Chief William H. Parker, the second-best known law officer in the U.S., after J. Edgar Hoover, actively attacked judicial rulings that prohibited the use of illegally obtained evidence in court and generally resisted pressure from courts to extend wider protections and rights of people accused of criminal acts.[63] As the voice for the department, Chief Parker spoke to various audiences across the nation. Speaking about the *Mapp* case to California Rotary Club members, Parker warned that "[i]n another thirty years, we [would] have primarily a socialist government . . . th[is] drift to socialism is caused by the Supreme Court giving out social philosophy in the

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[60] Richard H. Kuh, "Reflections on New York's 'Stop-and-Frisk' Law and Its Claimed Unconstitutionality," *Journal of Criminal Law, Criminology, and Police Science* 56, no. 2 (March 1965): 37, 32-38; James Booker, "Illegal Seizure: Many Happy Over Court Decision," *New York Amsterdam News*, July 8, 1961, 9.
[61] Kuh, "Reflections on New York's 'Stop-and-Frisk' Law," 37.
[62] Wolfgang Saxon and Paul Vitello, "Richard H. Kuh, Ex-Manhattan Prosecutor, Dies at 90," *New York Times,* November 18, 2011, D8.
[63] Paul Jacobs, *Prelude to Riot: A View of Urban America From the Bottom* (New York: Random House, 1967), 19.

guise of legal opinions."[64] While anti-*Mapp* sentiments were pervasive among law enforcement, I argue that Rockefeller elicited legislative proposals for stop-and-frisk, no-knock and other bills not only because police bureaucrats supported them, but also because their underlying agenda aligned with Rockefeller's long held motives to reform criminal justice and to become President.

Rockefeller gained insight on how New York's law enforcement regime interpreted the significance of *Mapp*. Law enforcement officials alleged that *Mapp* weakened the progress of police reform. Before the Supreme Court issued the landmark opinion, law enforcement departments across the nation had reached great traction in building a police professionalism movement.[65] Scholar Robert M. Fogelson's *Big-City Police* provides an account of this professionalization movement.[66] Several scholars have defined what constitutes professional police and most agree that it involved law enforcement elites advocating for greater bureaucratic management of police officers. According to Fogelson, this movement consisted of reforms that developed in waves. The earliest wave occurred between 1890 and 1930, then a second wave took place between 1940 and 1970, when the character of city police departments improved the most. Social reformers, such as middle-class clergymen and business leaders, began the first wave. It ended in 1930 with these civic leaders centralizing the city police.[67] However, the pressure for the second wave of reform came directly from within police departments. The

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[64] Jacobs, *Prelude to Riot*, 45.

[65] At that time, most contemporaries dismissed police bids for professional status and questioned their claims of expert knowledge. However, things shifted shortly thereafter as platforms developed on police reform, officials emphasized knowledge and training and courts began to recognize and rely on the policemen as "professionals." Jacobs, 45.

[66] Robert M. Fogelson, *Big-City Police* (Cambridge: Harvard University Press, 1997).

[67] Between 1890 and 1930, police departments functioned more like a political machine with ward bosses hiring and firing policemen who pledged loyalty to a neighborhood in exchange for patrol jobs as rewards. Middle-class clergymen, business leaders and social reformers began the first wave of reform around 1890 by centralizing the police and removing political appointments. By 1930, most major police departments adopted a civil service system and the centralized approach began. Fogelson, *Big-City Police*, 11.

cornerstones of the second wave happened during the 1950s, it was then that police departments achieved their greatest status. For the first time in history, police unions emerged, providing law enforcement greater bargaining powers, and new training program helped police achieve greater recognition for professionalism. Unions became major political power blocks and increased the force of the movement.[68] But, as Fogelson writes, "many Americans began to have second thoughts about the course of the police reform." In addition to the reservations, he points out people criticized that "reformers had made the police forces more responsive to the bureaucrats, who [had] ran them, [rather] than to the citizens who dealt with them. And still others thought that the reform campaign had changed the entrance requirements in ways which barred Black[people] and other minorities from the big-city police."[69] Fogelson contends such reservations "shattered the reform coalition and brought the reform movement to a standstill."[70]

Fogelson's work, although seminal, overlooks judiciary perceptions and does not address how federal court decisions impacted the police professionalism movement. Here, I expand his scope of inquiry and suggest that Supreme Court justices considered local search and seizure practices unprofessional, particularly law enforcement officers' behavior toward non-white and poor citizens, which led the *Mapp* decision to regulate police conduct. At the time, this major shift in judicial precedent limited police surveillance powers and mandated local courts to impose sanctions against police for violating the Fourth Amendment. Law enforcement leaders considered the *Mapp* decision a threat to the professionalism movement. Consequently, I assert that law enforcement elite vied to regain their power and advance the prestige of the professionalism movement.

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[68] Fogelson, 163 (discussing the National Registry and Training Services), 335 *citing* Ralph L. Smith, *The Tarnished Badge* (New York City: Thomas Crowell Co., 1965).
[69] Fogelson, *Big-City Police,* 12.
[70] Fogelson, 12.

Forty years after Fogelson, scholarship on police professionalism has expanded in scope. Scholar Anna Lvovsky offers origins for the judicial presumption of police expertise. Ultimately, Lvovsky finds that during the early 1960s the professionalism movement recast the individual officer as an "expert" witness.[71] At that same time, a trend also emerged in the realm of evidence where trial judges began considering police officers as expert investigators of crime and other topics. Subsequently, that trend moved into criminal procedure in the early 1960s, where the rise of police expert witnesses ultimately caused "judges to invoke the wisdom of better trained officers to analyze probable cause and to authorize investigatory stops."[72] Thus, the *Mapp* decision upset more than just law enforcement surveillance powers, it also threatened judicial deference to police insight for evaluating probable cause and investigative stops.

Scholar Josh Segal argues New York's stop-and-frisk law derived from the desires of law enforcement bureaucrats. Together law enforcement executives and police rank and file wanted to create a more professional police force. It was this goal that ultimately motivated their support for a new law to govern search and seizure practices. "By . . . presenting a professional image to the courts, law enforcement administrators sought to win judicial approval of stop-and-frisk practices . . . [and] increase their control over the police rank-and-file. Courts ultimately condoned stop-and-frisk, and endorsed the image of the professional police officer."[73] Segal examines the development of New York's stop-and-frisk law from a narrow lens, bypassing roles played by Governor Rockefeller and social factors such as race, class and gender. Using a

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[71] Fogelson, 12.

[72] Anna Lvovsky concludes that the police professionalism movement culminated in the area of criminal law "where the promise of police expertise — now borne out both on the witness stand and at suppression hearings — repeatedly salvaged controversial loitering statutes from vagueness claims, offering the officer's criminological insight as a check against the risk of arbitrary enforcement." Anna Lvovsky, "The Judicial Presumption of Police Expertise," *Harvard Law Review* 130, no. 8 (June 2017): 2000.

[73] Josh Segal, "'All of the Mysticism of Police Expertise': Legalizing Stop-and-Frisk in New York, 1961-1968," *Harvard Civil Rights-Civil Liberties Law Review* 47, no. 2 (June 2012): 575.

critical race lens, I broaden the scope of inquiry to analyze how race, class and gender intersected during the legal development of search and seizure laws, such as stop-and-frisk and no-knock. I examine Rockefeller's much earlier political agenda and juxtapose his structural concern for the effectiveness of state police power. Ultimately, I contend this history and political aspirations were sources of Rockefeller's antagonism to the *Mapp* decision and that what he realized from Kuh and NYPD bureaucrats was political opportunity to exploit their desires.

Recent scholarship on the police professionalism movement asserts that these bureaucrats believed the endless cases of misconduct and brutality in minority neighborhoods occurred because "officers failed to respect departmental policies."[74] These top bureaucrats wanted to gain greater control over patrol officers. They claimed brutality controversies adversely impacted police duties. Rockefeller also heard from police bureaucrats who wanted to tighten their control over the police rank and file. I, like Josh Segal and other scholars, argue that stop-and-frisk was the bureaucrats' way to surveil the police. The law required police to record every stop or search on new U.F. 250 form, "Report of Stopping by Force and Stopping Accompanied by Frisk", and explain the pretext for each encounter on a form that administrators would later review.[75] Police bureaucrats believed the new requirement and paperwork would help officers

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[74]Segal, "'All of the Mysticism of Police Expertise,'" 589; See Lvovsky, "The Judicial Presumption of Police Expertise," 2000; Scholars have provided separate accounts of litigation surrounding loitering laws and investigatory stops, generally without addressing the topic of police expertise. See, e.g., Risa Goluboff, *Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s*. (New York: Oxford University Press, 2017).; John Q. Barrett, "Deciding the Stop and Frisk Cases: A Look Inside the Supreme Court's Conference," *Saint John's Law Review* 72, no. 3 (1998): 749; John A. Ronayne, "The Right to Investigate and New York's 'Stop and Frisk' Law," *Fordham Law Review* 33, 2 (1964): 211; These scholars have also noted that New York's stop-and-frisk legislation figured into public debates about police professionalism, but have not connected this story to the broader history of the courts' negotiations with police expertise. See Anders Walker, "'To Corral and Control the Ghetto': Stop, Frisk, and the Geography of Freedom," *University of Richmond Law Review* 1223, (2014): 48.

[75] The Combined Council issued a memorandum to "All Law Enforcement Officers in New York State", detailing the authority conferred by the new stop-and-frisk and no-knock statutes and the novel reporting obligation for officers. Memorandum from the N.Y. State Combined Council of Law Enforcement Officers to All Law Enforcement Officers in N.Y. State Combined Council of Law Enforcement Officers in N.Y. State (June 1, 1964) [hereinafter Memorandum to All Officers]; Segal, 594. Subsequently, training personnel required an officer to fill

hone their knowledge of criminal behavior and appear more professional and organized when testifying in court.[76] While advocating for stop-and-frisk, the administration downplayed their motivations to police the police, choosing instead to publicly emphasize the narrative that *Mapp* caused police ineffectiveness, while stop-and-frisk would correct that problem and protect police from danger.

Governor Rockefeller sought stop-and-frisk and no-knock statutes because he wanted the legislature to clarify police officers' street-level authority after *Mapp*. Rockefeller explained to the legislature that the stop-and-frisk measure was "urgently needed because the present law . . . [was] uncertain and because the police must be provided [. . .] with sound tools to carry out their sworn duty to protect the public."[77] He also acknowledged that the measure was conceived from collaboration with the New York State Combined Council of Law Enforcement Officials (Combined Council), a lobbyist group headed by the New York State District Attorney's Association and other organizations composed of publicly employed administrators in the criminal justice system. New York City officials were the majority of the members in the Combined Council and other organizations that figured prominently within the Council.[78] A top law enforcement media source published a piece opposing the Supreme Court's restrictions on police powers. According to an article in the nationally circulated *Police Chief*,

> The Supreme Court of the United States has, in recent years, wrought a veritable revolution in the administration of criminal justice. This revolution has been accomplished by the rendering . . . of a series of decisions having to do with the . . . first eight amendments and the Fourteenth Amendment to the Constitution . . . The net effect of these decisions appears to be the strengthening of the

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out a U.F. 250 form "immediately" after effecting a stop or conducting a frisk or a search and then inform the desk lieutenant. New York Police Academy, *New Laws--1964*, *Police Academy Unit Training Memorandum*, September 1964.

[76] Brief for N.Y. County District Attorney as Amicus Curiae Supporting Respondent, Sibron v. New York, 329 U.S. 40 (1968): 33-34.; Segal, 595.

[77] Annual Message, January 8, 1964, 17–18.

[78] Annual Message, January 8, 1964, 17-18.

> individual's rights and a corresponding limitation on the police power of the states.[79]

The author of the article, Joseph Stengel, based this conclusion from undisclosed surveys and workshops in which law enforcement agencies predicted that *Mapp,* and "highly technical rules" governing search and seizure, would constitute a breakdown in enforcing criminal laws.[80] Speaking to both local and national law enforcement agencies, the *Police Chief* expressed serious doubts about *Mapp's* imposition of the exclusionary rule, stating that "it appeared to some that the rule was simply a device for excluding the truth in criminal trial."[81] The article also mentioned that a major concern for police was the permissible length for a detention during an investigation of a crime and the rules or standards governing a search after such a stop.

As early as 1962, the Combined Council set its agenda to lobby for legislative revision of search and seizure law.[82] They argued that "recent judicial interpretations on search and seizure . . . placed a roadblock in the path of justice--an encumbrance[--]which must be removed."[83] The judicial interpretation of *Mapp* posed major problems for police because of its encumbrance to field investigation practices--street stops and searches of civilians--which police greatly relied on to detect and prevent crime.[84] In previous chapters, I have also shown police used these practices to harass Black people, and NOI members.

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[79] Joseph J. Stengel, "Restrictions on Search and Seizure," *The Police Chief*, October 1967, 6. American Civil Liberties Union Records: Public Policy Papers, Department of Rare Books and Special Collections, Princeton University Library, MC# 001, Box 1083, Folder 27, "Stop & Frisk" Law, 1967.
[80] Stengel, "Restrictions on Search and Seizure," 210.
[81] Stengel, 210.
[82] Richard H. Kuh, "The Mapp Case One Year After: an Appraisal of Its Impact in New York" (pts.1 & 2) *New York Law Journal* (September 18, 1962): 4 [hereinafter Kuh, "One Year After Mapp" (pt 2)]; Richard H. Kuh, "Reflections on New York's "Stop-and-Frisk" Law and Its Claimed Unconstitutionality" *Journal of Criminal Law, Criminology, and Police Science* 56, no. 1 (March 1965): 32-38, 37. Segal, "All of the Mysticism of Police Expertise," 586.
[83] N.Y. State Combined Council of Law Enforcement Council Officials, Police Protection: More or Less? 1 (1964) [hereinafter COMBINED COUNCIL] on file with New York State Library.
[84] COMBINED COUNCIL, 1, 4; See Letter from Julius Volker to Sol Neil Corbin, February 25, 1964, on file with *New York State Library*; Segal, "All of the Mysticism of Police Expertise," 586, note 90, citing Kuh, "One Year After Mapp," 2; Kuh, "Reflections on New York's 'Stop-and-Frisk' Law," 37-38.

In 1956, the New York City Police Department's Rules and Procedures established practices to govern police and their conduct in the streets. According to the rules and procedures, officers had to "investigate all suspicious circumstances" in the field such as "persons passing late at night with bundles or persons loitering about or acting suspiciously."[85] In addition, the rules encouraged patrolmen to "stop any person or operator of a vehicle for the purpose of identification and to satisfy himself that such person is on legitimate business."[86] *Mapp* required law enforcement to have "probable cause" to search individuals, homes and vehicles. However, the rules and procedures did not mandate that officers establish "probable cause" before stopping a person or vehicle.

The Combined Council's primary critique was that *Mapp*'s probable cause requirement created a dual trap for officers. On one hand, *Mapp*'s ruling made it clear that the U.S. Constitution bars police from making an arrest unless they have "probable cause" to think a particular person has committed or will commit a crime. On the other hand, *Mapp* created confusion concerning a patrolman's ability to seize or detain an individual in order to investigate crime. The Combined Council argued that the new decision caused police to question whether *Mapp* also required police to use probable cause as a standard to stop someone. The Combined Council acknowledged that probable cause required officers to have more than "just suspicion." In practice, sometimes police had to forcibly stop people to investigate crime and that kind of stop could be considered an arrest. Therefore, a "forcible stop" based on "mere suspicion" became an unconstitutional arrest. Likewise, the Combined Council questioned whether courts would consider even a moderate search or, in police parlance, a "frisk" tantamount to an illegal

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[85] New York City Police Department, Rules and Procedures 43 (1956). [hereinafter NYPD Rules and Procedures] Municipal Archives, the City of New York Department of Records and Information Services.
[86] NYPD Rules and Procedures, 43.

search. The Combined Council recommended stop-and-frisk legislation to put flexibility back into the constitutional equation and avoid this dual trap.

New York Police officials felt that *Mapp*'s mandatory exclusionary rule, coupled with New York's antiquated arrest statutes and diverse state court holdings on the power to detain, improperly restricted effective police action. New York law enforcement officials demanded that the legislature pass a stop-and-frisk statute that would permit police to detain and frisk a suspect on the grounds of "reasonable suspicion," thereby eliminating the necessity of "probable cause" for an arrest. According to their reading of the existing law, New York legislature had precedent for enacting a stop-and-frisk statute. Other states in the North East had enacted stop-and-frisk statutes even before the *Mapp* decision.[87] The legislatures of those states recognized that police often investigated people and criminal behavior without first having to arrest a suspect or bring a person to the station house for booking or court for arraignment. Several such states passed legislation creating a category of permissible restraint that was less than an arrest, which allowed police greater flexibility for investigation and the performance of their duties. Police officials sent a memorandum to New York's legislature arguing for a stop-and-frisk statute.[88]

From Probable Cause to Reasonable Grounds

Law Enforcement urged the legislature to pass a law to reverse *Mapp,* even when NY courts were not enforcing the decision. In late January 1962, Kuh testified before the New York State Legislature regarding the need to revise New York's Criminal Procedure Code,

[87] Bruce Berner, "Search and Seizure: Status and Methodology" Valparaiso University Law Review (1974).
[88] N.Y. State Combined Council of Law Enforcement Officials, Let Your Police--Police!, (1963): 1-2.

proclaiming "Rome is burning."[89] According to him, *Mapp* had set fire to a longstanding law enforcement power. After the U.S. Supreme Court first applied the Fourth Amendment's search and seizure protection to the states in 1949, it made states exempt from following the exclusionary rule and instead allowed states to provide their own remedy for constitutional violations. New York neglected to impose the exclusionary rule, and courts held that victims of unlawful seizure could avail themselves to a civil remedy.[90] A year passed before New York's highest court issued an opinion citing *Mapp* and mandated courts throughout the state to enforce the exclusionary rule. On April 5, 1962, the Court of Appeals decided *People v. O'Neill* which was one of several cases in which the Court overturned a conviction on the ground that it had been based on unlawfully seized evidence.[91] The New York Court of Appeals indicated that any change in the search and seizure procedure must come from the legislature. Just before the *O'Neill* decision, Governor Rockefeller sent a note to the legislature proposing adoption of the reasonable grounds standard:

> [T]he Code of Criminal Procedure [should] be amended to enact in New York that part of the Uniform Arrest Act which permits a police officer to question for a limited time and to search, without arresting, suspicious persons who are abroad, where the officer has reasonable grounds to believe that such persons are committing, have committed or are about to commit a crime.[92]

The governor's memo stated that the main purpose of the bill was "to remove the uncertainty that has attached in recent years to the admissibility of evidence obtained in these circumstances." In

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[89] A transcript of Kuh's Address on January 31, 1962 is available in Manuscripts and Special Collections, New York State Archives.

[90] New York continued to follow its own court's long standing judicial decision from 1926. See People v. Defore, 150 N.E 585, 589-90 (1926), in which Judge Cardozo famously questions, "why should the criminal go free because the constable has blundered?"; People v. Richter's Jewelry, Inc., 51 N.E.2d 690, 693-94 (1943) (reaffirming *Defore*).

[91] People v. O'Neill, 11 N.Y.2d 148, (1962), citing Mapp v. Ohio, 367 U.S. 643, (1961) retroactively to overturn the conviction, reasoning that detectives' warrantless search of Lynne O'Neill's home in March 1960 was illegal, and seizure of her nude photographs was inadmissible evidence.

[92] New York State Legislative Annual 62 (1965), 68.

two years' time, Rockefeller would propose unprecedented initiatives to create a statutory power authorizing police to stop, question and search individuals in the absence of a warrant or probable cause. No court had invalidated the granting of such authorization by states. To transform his initiatives into law, Rockefeller needed a sponsor and a bill written with legal language viable for passage.

Governor Rockefeller was generally impatient with state legislators, but had little difficulty getting a sponsor for the "pre-arraignment criminal procedure" described in his anti-crime package.[93] Needing no additional persuasion, Julius Volker, a Republican member of the New York State Assembly from Erie County, eagerly drafted a statute with an altogether different legal standard--from what *Mapp* held—for police to stop, question and conduct a search of individuals. Volker's bill did not rely on the language of "probable cause." Instead it created a new standard of "reasonableness" for a search, which provided:

1. A police officer may stop any person abroad in a public place whom he reasonably suspects is committing, has committed or is about to commit a felony or any of the crimes specified in . . . this chapter, and may demand of him his name, address and an explanation of his actions.
2. When a police officer has stopped a person for questioning pursuant to this section and *reasonably suspects* that he is in danger of life or limb, he may search such person for a dangerous weapon or any other thing the possession of which may constitute a crime, he may take and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest such person.[94]

This section was entitled, "Temporary Questions of Person in Public Places, Search for Weapon," but colloquially known as "stop-and-frisk." In early March 1964, Volker presented the bill to the New York State Legislature with several essential elements left undefined. Too

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[93] Rockefeller would often leave his office in the state capital building, walk up and down the corridors of the legislative branch and unconventionally rally support for his legislative initiatives. James Desmond, *Nelson Rockefeller: a Political Biography*. (New York: Macmillan, 1981), 195.

[94] Emphasis added, See NY CLS CPL § 140.50; Stephen M. Raphael, "Stop and Frisk in a Nutshell: Some Last Editorial Thrusts and Parries Before It All becomes History," *Alabama Law Review* 20, (1967-1968): 294.

many questions remained unanswered. For example, what was an appropriate length of time for a police officer to stop a person? What constituted a "search" for dangerous weapons or "any other thing"? How did this comport to search and seizure law under *Mapp v. Ohio*? But Volker intended these oversights. According to Volker, the second paragraph of the bill contained the most important section; the "real necessity for the bill . . . provides that the police officer may take into his possession evidence found after the search. This is in response to the many court rulings [that] have suppressed evidence unless it was obtained in strict accordance with . . . *Mapp* . . . The salutary effect of this bill is to render evidence so obtained 'legally obtained.'"[95] Volker had carefully crafted the bill's language to limit and make exception to federal court rulings that limited police surveillance powers and excluded evidence.

Volker introduced Governor Rockefeller's stop-and-frisk bill to evade *Mapp*'s imposition of the exclusionary rule upon the states, but he went steps further to grant police the rights to detain and search anyone for weapons on the street based on mere "suspicion."[96] As Rockefeller's memo suggested, Volker likely took the reasonableness standard from the Uniform Arrest Act, which covered several aspects of arrest including detentions and searches for investigative purposes.[97] Since the 1930s, the Act served as a model for states, but did not bind

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[95] Letter from Julius Volker to Sol Neil Corbin, February 25, 1964, on file with New York State Library.

[96] Julius Volker Papers, "To Amend the Code of Criminal Procedure, in Relation to Temporary Questioning and Search for Weapons," January 9, 1964, M. E. Grenander, Department of Special Collections & Archives University Libraries, University at Albany, State University of New York, Series 1, Box 1, Folder 9.

[97] According to the Uniform Arrest Act, Section 2, "Questioning and Detaining Suspects":

(1) A peace officer may stop any person abroad who he has reasonable grounds to suspect is committing, has committed or is about to commit a crime and may demand of him his name, address, business abroad and [where] he is going.
(2) Any person so questioned who fails to identify himself or explain his actions to the satisfaction of the officer may be detained and further questioned and investigated.
(3) The total period of detention provided for by this section shall not exceed 2 hours.

them.[98] New York State Legislature never enacted it. In the early 1960s, law enforcement agencies from around the country began to show a renewed interest in the Act with efforts in some states to adopt it into law.[99] In the aftermath of *Mapp*, the ACLU raised concerns over sections of the Uniform Arrest Act that empowered police to take persons into custody, question and search them on "less than probable cause," and subsection (3) that provided a permissible "period of detention." The ACLU was concerned that these stops or "detentions" permitted seizure of individuals that would not be recorded in any official record unless, at the end of the detention, the person detained was subsequently arrested and charged with a crime. The organization disapproved all three subsections of the Act because they permitted "arrests on suspicion for investigation" and voted that "there should be no relaxation of the strict probable cause standard."[100] Ultimately, the Board considered those provisions unconstitutional because they encouraged unlawful police practices by renouncing the probable cause standard and they purported to legitimize an arrest after the fact, even though there was initially no probable cause to arrest.[101] Therefore, when the time came for the legislature to cast a vote, several representatives sought to block stop-and-frisk from becoming law.

Black Resistance in the State Legislature

Black representatives in the New York State Legislature compared laws that increased police search and seizure powers to laws introduced during the Nazi regime. Since the 1940s,

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[98] In 1939 the Interstate Commission on Crime prepared the Uniform Arrest Act. The NYPD asked the Mayor's legislative representative to petition the legislature for law that would grant police the right to temporarily detain a person for up to a period of two hours. John A. Ronayne, "The Right to Investigate and New York's "Stop and Frisk" Law," *Fordham Law Review* 33, no. 2 (1964): 211-238, 212.

[99] Paul Bender, University of Pennsylvania Law School, "Comment on the Uniform Arrest Act" at 5. ACLU Records, MC001, Box 1078, Folder 8. Sealy Mudd, Princeton University Library.

[100] ACLU National Board Minutes, "Due Process Committee Meeting," March 5, 1963, 2. ACLU Records MC001, Box 1078, Folder 8. Sealy Mudd, Princeton University Library.

[101] The Board reaffirmed the ACLU's commitment to standards that required police to take an arrested persons before a magistrate "without unnecessary delay—far less than 24 hours." ACLU National Board Minutes, "Due Process Committee Meeting," 3.

Black political groups worked tirelessly to grant New Yorkers greater search and seizure protections.[102] Before the bills were introduced, the *Liberator Magazine*, a Black radical periodical based in New York City, polled Black democrats in the New York State Assembly and reported that several vehemently objected to any legislation supporting police stop-and-frisk powers, predicting it would "permit police to operate a Gestapo."[103] The term "Gestapo" refers to the German police state that operated under the Nazi regime from 1933 to 1945. This police force terrorized Jews and non-Aryan citizens by using tactics such as arbitrary arrest and detention, prolonged interrogations, forced confessions and willful abuse of police authority. Scholar Robert Gellately describes the social history and detailed treatment of the Gestapo. He writes that the Gestapo gained "a reputation for ruthlessness and cruelty, so that the very mention of the name filled the hearts of contemporaries with dread and foreboding."[104] In the early 1960s, as chapter three shows, several Black Muslims had used similar language to describe New York's police state and NYPD's violent, racial aspects. The *Liberator* quotes the seemingly grandiose language of an assemblyman who follows a Black radical tradition that addresses oppression by connecting it to a global framework marred by ideologies of white supremacy. Collapsing geographies and time, they opposed proposals such as Governor Rockefeller's stop-and-frisk and no-knock laws because they granted too much power to the NYPD and essentially created a ruthless Gestapo police force.

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[102] Biondi, *Stand and Fight*, 202-207.

[103] Rose L.H. Finkenstaedt, "Narcotics in the Ghetto: Neo-Colonialism at Home," *Liberator Magazine,* March 1963, 12-14, available at Schomburg Center for Black Research; for further discussion on the *Liberator,* see Christopher M. Tinson, "'The Voice of the Black Protest Movement': Notes on the Liberator Magazine and Black Radicalism in the Early 1960s," *Black Scholar* 37, no. 4 (2008): 3-15; Christopher M. Tinson, *The Fight for Freedom Must be Fought on all Fronts: Liberator Magazine and Black Radicalism, 1960-1971* (Amherst: University of Massachusetts Amherst 2010), http://scholarworks.umass.edu/dissertations/AAI3409663/.

[104] Robert Gellately, *The Gestapo and German Society: Enforcing Racial Policy, 1933-1945* (Oxford: Clarendon Press, 2008), 4.

Constance Baker-Motley, a high profile New York attorney and celebrated civil rights activist, was skeptical of the bill and attempted to stall its passage. She was known for her stance that leaders of the civil right movement become active in politics in order to enter the power structure. Baker-Motley was previously associate counsel for the Legal Defense and Education Fund at the NAACP with Thurgood Marshall, and together they liticated the landmark, *Brown v. Board of Education*.[105] She ran for a Democratic seat that had become vacant in the New York State Senate. With eighteen years of civil rights/legal experience she easily won the seat in February 1964 and became the first African American woman elected to the State Senate.[106] When the new stop-and-frisk bill reached the Republican-controlled senate, Baker-Motley asked to table the vote and questioned whether the new law would give police too much discretion. Nonetheless, after less than two and a half hours of debate, both houses passed the bill.[107]

The political system of New York's Legislature stymied the representatives who opposed the new legislation. Social historian Lerone Bennett, Jr. later critiqued America's political system as the "art of the impossible" for the Black man.[108] The Nation of Islam's newspaper, *Muhammad Speaks*, reported on a speech Bennett gave before the National Conference of Negro Elected Officials.[109] "Black leaders are often criticized for having some deficiencies," Bennett told the group, "but not enough attention is paid to the framework within which they operate."[110]

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[105] 347 U.S. 483 (1954).
[106] "Tells Rights Leaders: Get into Politics," *Muhammad Speaks,* January 31, 1964, 22; Douglas Martin, "Constance Baker Motley, Civil Rights Trailblazer, Dies at 84," *New York Times,* September 25, 2005, http://www.nytimes.com/2005/09/29/nyregion/29motley.html?pagewanted=all&_r=0.
[107] In the Assembly, stop-and-frisk passed roll call 92-45 and the Senate 33 to 22; Later no-knock passed with a vote of 101-26 in the Assembly and 43 to 12 in the Senate. Douglas Dales, "Rockefeller Signs Bills Increasing Powers of Police," *New York Times,* March 4, 1964.
[108] "Historians Say Blacks Are Voting More But Getting Less Out Of It," *Muhammad Speaks*, October 20, 1967, 16. NYPL Schomburg Center for Research in Black Life.
[109] "Tells Rights Leaders: Get into Politics," *Muhammad Speaks,* January 31, 1964, 22. NYPL Schomburg Center for Research in Black Culture.
[110] "Tells Rights Leaders: Get into Politics," 22.

In the New York Legislature, Black residents were underrepresented.

Using legislative apportionment schemes, political conservatives gave upstate regions greater representation (beyond their population) and thus political power to promote or kill bills than representatives from city centers. Demographically, white people and conservative ideology constituted the majority of upstate New York, which held a significant political block in the state legislature. On the other hand, Black, Puerto Rican and liberal democrats in New York City were a powerful political constituent. Yet the lives of residents in New York City were much too often governed by legislators in Albany, Buffalo, Erie, and Schenectady or other upstate regions. The Capitol decided important issues in New York's five boroughs. Much of the agenda and proposals about city regulation, housing development, mayoral policing policy and local criminal justice policy required approval by Albany.

Rather quickly after the vote, on March 2, 1964, Governor Rockefeller signed the Anti-Crime Bill and codified new criminal procedure laws.[111] Two new provisions appeared in Section 180-a of the Code of Criminal Procedure which became commonly known as New York's stop-and-frisk law on reasonable suspicion and then simply stop-and-frisk, and its companion "knock-knock," which became known simply as the "no-knock" law.[112] Both laws went into effect on July 1, one day before the U.S. Congress passed the Civil Rights Act of 1964.

Nelson Aldrich Rockefeller: Governor For Police Reform

The few scholars who discuss the legal origins of New York's stop-and-frisk tend to

[111] Dales, "Rockefeller Signs Bills Increasing Powers of Police."

[112] New York Session Laws 1964, Act of March 2, 1964, Chapter 86, section 2, SS 180-a, 1964 N.Y. Laws 111 (codified at N.Y. CODE CRIM. PROC. SS. 154-a) (current version at N.Y. CRIM PROC. LAW SS. 1.20 (McKinney 2011); and Chapter 85, section 1, N.Y. CODE CRIM. PROC., section 799(b).

focus on police motivations and minimize Governor Rockefeller's role altogether.[113] Yet Rockefeller was a key figure because of his wealth and political influence over the legislature. Born on July 8, 1908 in Bar Harbor, Maine, Nelson Aldrich Rockefeller was the grandson of Standard Oil founder John D. Rockefeller, Sr., the wealthiest man in the United States in the late 19th century. His maternal grandfather, Nelson Aldrich, was a powerful senator from Rhode Island. As the third of six children, Rockefeller developed a reputation of being headstrong and stood out as the leader among his siblings. Even as a child he dreamed of being president one day and later in life he recalled, "with all the money in the world what else could I want other than to be president." Following his Bachelor of Arts degree in Economics from Dartmouth College in 1930, Rockefeller worked for Chase National Bank, a partially owned Rockefeller family business. By 1938 Rockefeller (at thirty years old) became president of Rockefeller Center, Inc, the largest private construction project in New York City at the time and an enormous commercial leasing complex. Yet, despite earning a reputation as a successful businessman, he always fashioned himself a political leader. Rockefeller's biographers argue that he initially had no aspiration to run for governor of New York.[114] He even declined suggestions to run for mayor of New York City. The multi-millionaire had unimaginable name recognition but lacked experience in elected office, which was a major credential needed for winning the governorship. However, after attending a dinner party back in 1958, a popular political strategist convinced Rockefeller to run against Democratic incumbent Governor W.

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[113] Segal, "'All of the Mysticism of Police Expertise,'" 589; See Lvovsky, "The Judicial Presumption of Police Expertise," 2000; Risa Goluboff, *Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s*. (New York: Oxford University Press, 2017).; John Q. Barrett, "Deciding the Stop and Frisk Cases: A Look Inside the Supreme Court's Conference," *Saint John's Law Review* 72, no. 3 (1998): 749; John A. Ronayne, "The Right to Investigate and New York's 'Stop and Frisk' Law," *Fordham Law Review* 33, 2 (1964): 211.

[114] Michael Kramer and Sam Roberts, *I Never Wanted to be Vice-President of Anything!: An Investigative Biography of Nelson Rockefeller* (New York: Basic Books, 1976); Gary Allen, *The Rockefeller Files* (Seal Beach: 76 Press, 1976).

Averell Harriman.

Governor Harriman was a scion from a wealthy railroad family and an accomplished person in his own right having succeeded as a banker, diplomat and politician. He was elected governor in 1954 after defeating a three-time Republican governor. Rockefeller began his gubernatorial campaign during a low political point for Harriman. From 1958-1959, the press frequently scrutinized Harriman for the brazen activities of police officials who met in upstate New York with New York's largest organized crime families. Rockefeller used this rather embarrassing situation to his advantage in the campaign, often criticizing Harriman for "allowing the 'notorious' gangsters' meeting at Appalachia" back in 1957. He also accused Harriman and Democrats of being inactive in the fight against crime, which Rockefeller believed had dwindled to an "uninspired token effort." Amidst a climate of public accusations, critiques of inefficiency, corruption and media exposure of law enforcement officers making deals with organized criminals, Harriman faced a slim probability of reelection. The negative press against Harriman and a million-dollar campaign expenditure allowed Rockefeller to beat the incumbent by a landslide with 600,000 votes in the November election.

On January 1, 1959 Rockefeller became governor of New York. As a relatively liberal Republican, his first two years in office involved improving public spaces, increasing the number of public parks and tackling environmental problems, such as the pollution of waterways, which helped improve New York's drinking water and sewage disposal. Rockefeller also issued hundreds of millions of dollars in state bonds in order to improve quality of life for small villages and urban areas.[115] The question becomes: what motivated an otherwise liberal governor of New

[115] By the 1970s, Rockefeller's bond policy caused the state to suffer economic hardship resulting in major budget cuts and ultimate downsizing of the police force. Dick Zander, "The Rockefeller Years: The Governor's Liberal Crown Tarnished by Tight Money," *New York Newsday*, April 18, 1969. Available at Rockefeller Archive Center

York to sponsor legislation that would negatively impact minority communities for generations to come?

Early Motivations: Police Reform and Presidential Aspirations

New York passed the stop-and-frisk law against a backdrop of Governor Rockefeller's campaign call to reform criminal justice, which included strengthening the state's police power vis-à-vis the federal government and giving local law enforcement greater authority on the streets and in court. While several groups influenced Rockefeller's policies, he acknowledged that his support for the bill was inspired by a group of police leaders and prosecutors from the Combined Counsel. Immediately after *Mapp,* Rockefeller had mentioned strengthening the police during his campaign for governor, which came as a critique of Governor Harriman's "indifference to or ignorance of the menace of crime in [the] state," which Rockefeller said was made evident by Harriman "blocking efforts to strengthen law enforcement." Rockefeller made his views known in a report on crime in New York in which he suggested the state wage a "major war against crime."[116] His concern was for police corruption and white syndicate street crime, particularly the Mafia's effect on business, and not crimes plaguing Black and Puerto Rican communities.[117] His campaign gesture toward strengthening the police meant reforming the police apparatus.

As governor, Rockefeller sought to reframe the police corruption he inherited from Governor Harriman's tenure. He also had to reckon with a negative reputation that had come to hover over U.S. police in recent decades. Various commissions and studies of urban policing

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NAR Collection, Record Group 15, Series 27, Box 2, Folder 40.

[116] Nelson A. Rockefeller, "Crime in New York State," May 14, 1958, 5. Rockefeller Archive Center, NAR Collection, "Summary Papers," Sleepy Hollow, New York.

[117] At various conferences, Rockefeller explained how the Mafia and black market cost everyone more money by stealing profits from legitimate businesses. On one occasion he said, "crime does not pay, but hurts business . . . the black market cost business money and the taxpayers pay more for goods. Ibid.

concluded that "from the conceptions of the American police, especially through the 1930s, constitutional issues of legality had been 'too remote to be of immediate concern'; the American police had not conformed to the rule of law."[118] The Wickersham Commission Report, a national study completed in 1931, found police practices "appalling and sadistic," posing "no intellectual issue for civilized men."[119] Following the Wickersham report, little was done to improve the police's negative conduct and reputation. Federal courts made several attempts to create a solution and sanction police misconduct. From *Weeks*' exclusionary rule to the *Wolf* decision in 1949, local courts remained confused about applying Fourth Amendment protections, and the outcome of a search and seizure case depended on jurisdiction. By the time the U.S. Supreme Court heard *Mapp*, twenty-four states admitted evidence that police illegally seized after conducting an unreasonable search and seizure. *Mapp* made municipal police forces operate under the due process of law, and demanded that police operate within bounds of civilized conduct. Before the *Mapp* decision, Rockefeller seemed determined to improve New York's police professionalism without altering its powers.

Rockefeller improved the state police force through gradual reforms. His mechanism for improvement was consistent with Raymond Fosdick's conceptualization of reform. According to Fosdick, a premier scholar of the American police system, police reform means finding a new source of police control and increasing the efficiency of police personnel.[120] Along those lines, Rockefeller's reform meant not only putting the right people on the police force, but also increasing its population, improving selection and training criteria, as well as building morale

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[118] Jerome H. Skolnick, *Justice Without Trial: Law Enforcement in Democratic Society* (New York: Wiley, 1966). 3.
[119] Skolnick, *Justice Without Trial*, 4, note 9; National Commission on Law Observance and Enforcement (Washington, D.C.: U.S. Government Printing Office, 1930-1931), 1-14.
[120] George H. McCaffrey, *American Police Systems* (New York: The Century Company, 1920), 221.

through other incentives. Sociologist Jerome H. Skolnick points out that reform at that time rarely recognized that police conduct was fundamentally related to the character and goals of the institutions itself.[121] In other words, the Rockefeller administration did not consider police problems, such as racialized policing, brutality or corruption, as systemic or the results of fundamental policies with deep roots. Hence, it seemed his reform did not tackle these problems as if they were premised on the system in which the police found themselves.

Police Training Academy

During the first three months as governor, Rockefeller proposed that the state legislature sponsor bills to make the existing police training programs more effective and expand them statewide. In March 1959, Rockefeller addressed the State Assembly seeking a bill to establish a Municipal Police Training Counsel.[122] The Counsel would have eight incumbent local and state law enforcement officers with police training experience. These expert officers would make the rules and regulations for the statewide minimum training program for police. Rivalry between local politics and Albany politics threatened the future of the training program. The Legislative Committee of the Conference of Mayors opposed Rockefeller's initiative and made several reservations to the bill's passage. Rockefeller determined that the reservations were unwarranted and argued instead that the need for minimum police training standards were "underscored by the rising incidences of crime" in the state and effective police work was essential to combat "corrosive criminal elements." At the time, there were over 40,000 local police officers in New York. The minimum training requirements assured that "no community in the state fell behind

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[121] This empirical study commenced at the Center for the Study of Law and Society in Berkeley, CA and used a variety of observation techniques to understand social foundations of the rule of law. It contributed to a growing body of literature on police reform. Skolnick, *Justice Without Trial*, vii, 4-5.

[122] Nelson A. Rockefeller to State Assembly, Memorandum filed with State Assembly on Establishment of Municipal Police Training Counsel, April 17, 1959; See Richard Amper, Press Secretary, Press Release, April 17, 1959. Rockefeller Archive Center, NAR Collection, "Summary Papers," Sleepy Hollow, New York.

certain basic training" techniques of their police. The bill required all police officers appointed after July 1960 to attend the minimum training. The bill's enactment placed New York at the forefront of law enforcement training programs.[123]

Growing Police Forces and Expanding Authority

Governor Rockefeller also increased the size of the police force as part of his police reform. At the beginning of 1959, there were 1,474 police officers in New York City. Rockefeller attracted new police by raising the salary and increased the total number of officers to 2,507 between 1964 and 1965.[124] As a result, New York had 20,000 local police outside of New York City and 23,000 in the five boroughs.[125] Rockefeller also expanded the resources of specific units of the NYPD.[126] According to Rockefeller, police were "spread too thinly to carry out their responsibilities to the citizens of the state" in the areas where they have traditionally operated, such as highway patrols and in rural areas. He also recommended an increase to the Division of State Police's budget.

Rockefeller appointed Arthur Cornelius, Jr. as superintendent of the state police. On February 9, 1961, Cornelius took office with the "mandate to reorganize, modernize and strengthen the state police, a task to which he dedicated the rest of his life." Cornelius had previously worked as a special agent in the Federal Bureau of Investigation for twenty-five years and supervised field offices across the country. Cornelius' efforts helped a great deal with Rockefeller's desires to expand the police force. During his tenure, plans for the construction of a State Police Academy were approved, in-service and basic school training were upgraded and

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[123] Rockefeller to State Assembly on Establishment of Municipal Police Training Counsel, April 17, 1959.
[124] "Message to Legislature" at 5, March 12, 1959. Rockefeller Archive Center, NAR Collection, "Summary Papers," Sleepy Hollow, New York.
[125] The five boroughs: Brooklyn, Bronx, Manhattan, Queens, and Staten Island.
[126] The New York City Department of Corrections Intelligence Unit emphasized reducing gang-related criminal activity. Rockefeller also doubled the number of men assigned to New York's Intelligence Unit and its budget.

the state police population more than doubled from 1,566 to 3,217, while civilian positions more than quadrupled. Additionally, the State Police's executive staff reorganized and coordinated field operations. Cornelius also developed specialized police force units to deal with the changing nature of crime. The NYPD's Special Investigatory Unit of the Bureau of Special Services (BSS), which had monitored Civil Rights organizations, discussed in chapter four, was the first to be formed.

New Surveillance Technology and Central Repository for Criminal Records

Rockefeller's reform supported new surveillance technology to collect personal data on individuals for criminal background checks. During his first term in office, he sought to organize and stream large pools of criminal data and fingerprints into a central repository to be shared across government bodies. Rockefeller initiated the enhancement of New York Police Teletype Network, which was technology that pooled statewide information for individual criminal records, and gave local police and courts immediate access to said information. However, this technology did not match individual fingerprint images to a person's criminal record from across the state or beyond New York's borders. Consequently, New York State contracted with International Business Machines (IBM) to create a new computerized system, known as New York State Identification (NYSID) which linked an individual's fingerprints to personal information and criminal records across the state and stored this information for criminal justice administration.[127] IBM produced a cutting edge product. The novelty of the technology was its speed and ability to consolidate information. Most importantly it provided a unique identifier assigned to an individual. The identifier or NYSID number derived from an algorithm programmed into the element and eventually every individual who was fingerprinted

[127] David Rockefeller, president of Chase Manhattan Bank, provided the loan to finance IBM's development of this technology, enabling IBM to win the contract bid with New York State.

would be assigned an NYSID number.[128] At the time, the New York State Division of Criminal Justice Services (DCJS) used fingerprints to verify records relating to a person's criminal history. Assigned NYSID numbers would offer further reliability.[129]

With IBM's latest invention fully developed and available, Rockefeller asked the legislature, in his 1964 Annual Message, to authorize the new technology which he described as "a statewide information sharing system to provide speedily, thorough use of modern electronic techniques, complete and accurate information essential to the investigation and prosecution of crime and the administration of criminal justice." The legislature passed this measure along with stop-and-frisk and no-knock. A year later, Rockefeller's surveillance technology made a person's criminal history from any part of New York accessible to law enforcement for investigation, prosecution and criminal justice administration.[130] By 1967, New York State Police became the first state agency to maintain a real-time computer system.[131]

Rockefeller pledged that NYSID information would be used only for criminal justice administration, and not for private matters, even though, controversially NYSID numbers were also assigned to individuals fingerprinted for civil purposes such as licensing or employment with the state, city or local government. Critics were concerned that private individuals would have access to NYSID data placed on their criminal record or DCJS "rap sheet."[132] Nevertheless, this new technology drew national and international attention as other states and

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[128] http://www.criminaljustice.ny.gov/dict/dataelement295.htm (last visited May 19, 2014), now available: http://www.criminaljustice.ny.gov/crimnet/ojsa/crimereporting/index.htm (last visited March 9, 2018); see NY CPL §160.30, which authorized the DCJS to process fingerprint images, classify them, search for previous records of the individual and promptly transmit the results to police departments and or other agencies.

[129] NY CPL §160.30.

[130] New York Electronic Data Processing Section, established in 1965.

[131] The computer system became known as the New York Statewide Police Information System (NYSPIS). See https://www.troopers.ny.gov/Introduction/Superintendents/Cornelius/ (last visited 6/17/13).

[132] The ACLU opposed giving private entities and individuals access to criminal records and other private information, arguing this violated privacy rights and could lead to discrimination, particularly in employment.

foreign governments sought it for their own law enforcement means. During Rockefeller's first term (1959-1962) in office, there was little discussion or concern regarding urban crime and no focus on street crime in inner-city areas. He addressed juvenile delinquency late during his term, focusing mostly on expanding police budgets to cover the administrative cost of implementing New York's pioneering Municipal Police Training Council Act which taught new police approaches to crime detections and personnel best practices.

Rockefeller: Presidential Candidate

Rockefeller's claim that a stop-and-frisk law was necessary coincided with his political interests. His expansion of the police power in 1964 neither mirrored an increase in violent crime nor guaranteed police greater protection on the streets. But his announcement for stop-and-frisk and no-knock materialized at the point when he needed conservative support for his presidential bid. After losing his first bid for the presidential nomination in 1960, Rockefeller anticipated strong opposition from the Republican right-wing and waited until late into the next campaign cycle to run. In early 1963, several Republicans were named as possible candidates including Senator Barry Goldwater, a conservative Republican from Arizona who was known for his bluntness and extremist right-wing views. By mid-1963, Goldwater had not announced he would run but was leading in opinion polls among Republicans. Rockefeller was also a potential contender. Several conservatives considered Rockefeller a liberal Republican and a "villain for the GOP Right" because of his moderate policies.[133] "[Rockefeller] should never be president," Goldwater bluntly remarked. "He's too old, and he was born into power, so used to power . . . I've seen that office abused too much."[134] It was almost a year and half away before the

[133] Kramer and Robert, *I Never Wanted to Be Vice-President of Anything!*, 5, 273; Joseph E. Persico, *The Imperial Rockefeller: A Biography of Nelson A. Rockefeller* (New York: Simon and Schuster, 1992).
[134] Kramer and Robert, 5.

Republican Party would convene for the National Convention in early July 1964 where they would pick a Republican nominee for the general presidential election. Goldwater expressed confidence that Rockefeller would not be picked because conservative Republicans "hate[d] his guts."[135] With growing influence from the radical right, Rockefeller's prospect of capturing the nomination loomed slim.[136] As long as Goldwater remained a plausible nominee, Rockefeller needed to attract attention and support from right-wingers.[137]

After officially announcing his candidacy for President in 1963, Rockefeller found an issue to gain more support from the Republican right: conservative backlash against the Supreme Court's criminal procedure decisions. Rockefeller joined the ranks of conservative Republicans who criticized recent liberal Supreme Court decisions that expanded civil liberties for criminals in state courts. At the top of their list was *Mapp,* which made the Fourth Amendment applicable to states and excluded evidence from local prosecutions when police conducted unlawful searches and seizure. Next was *Gideon v. Wainwright*, which gave poor criminal defendants the right to free counsel, also making 6th Amendment rights applicable in states.[138]

Less than a week after Goldwater entered the presidential race, Rockefeller publicly proposed New York's stop-and-frisk bill. For the first time in history, presidential candidates made criminal procedure an issue on their political platform.[139] Just days after Goldwater entered the Presidential race, Rockefeller opened the 1964 election year by introducing the

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[135] Kramer and Robert, 5.

[136] Rockefeller told his biographers the radical right was a "growing danger" due to its principals of "subversion." Most of his concern was aimed at the Young Republican Caucus, whose members symbolized the rightward leanings of the party, were against liberalism and instead supported the "Liberty Amendment" to outlaw income taxes and sell off government owned industries. Although they were a minority group, the Caucus was adequately financed and, at the time, Rockefeller feared their push for the white segregationist vote. Ibid., 274.

[137] "Interview with the Governor of New York: Where Rockefeller Stands," *U.S. News & World Report*, September 23, 1963, 76-83. Rockefeller Archive Center, NAR Collection Record, Group 15, Series 27, Box 2, Folder 96.

[138] 372 U.S. 335 (1963).

[139] "Interview with the Governor of New York," 76-83.

nation's most influential stop-and-frisk law. While campaigning for president, Rockefeller revealed that he "sponsored stop-and-frisk laws to clarify the powers of police officers in dealing with potentially dangerous suspects. An arresting officer must not be burdened with doubt as to the extent of his authority if his duties are to be properly performed."[140] However, gaining national attention for expanding police power was insufficient to improve Rockefeller's popularity among the party's hard right. Rockefeller sought a last chance effort to rally moderate Republicans in order to secure the presidential nomination. To pull this off, he "needed an issue," recalled one of his closest advisors, "and the extreme right was it."[141] In a speech, Rockefeller brought attention to the ways of the radical right, classifying them as "purveyors of hate and distrust in a time when, as never before, . . . the world is for love and understanding."[142] He also attacked the idea of a "white man's party," which was designed to attract white Southern Democrats into the Republican Party as a strategy for victory in 1964. The purpose of Goldwater's plan, he contended, was "to erect political power in the outlawed and immoral base of segregation and to transform the Republican Party from a national party of all the people to a sectional party for some of the people . . . A program based on racism or sectionalism [that] would . . . defeat the Republican Party in 1964."[143]

When the Republican Party convened at the Republican National Convention in San Francisco, California in July 1964, the audience booed and heckled at Rockefeller. Belva Davis, a Black news correspondent, recounted what happened shortly after Rockefeller was drowned

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[140] "The Crime Statement," June 28, 1968, 1, 5. Rockefeller Archive Center, NAR Collection, Sleepy Hollow, New York; see "Major Legislative Achievements—1962—Summary" and "An Act to Amend the Code of Criminal Procedure in Relation to Return of Property and Suppression of Evidence Obtained as a Result of Unlawful Search and Seizure," April 29, 1962, Rockefeller Archive Center, Series III, NAR Collection, Group 1517, Box 26, Folder 146, Sleepy Hollow, New York.

[141] Kramer and Robert, *I Never Wanted to Be Vice-President of Anything!*, 273.

[142] Kramer and Robert, 275; "Rockefeller Lashes Goldwater As GOP Election Battle Looms," *Indianapolis Recorder*, July 20, 1963, 1, 3.

[143] Kramer and Robert, 275; "Rockefeller Lashes Goldwater," 1,3.

out by screaming Goldwater delegates. Davis recalls, "Goldwater fans in the galleries . . . were off the leash. The mood turned unmistakably menacing . . . I could feel the hair rising on the back of my neck as I looked into faces turned scarlet and sweaty by heat and hostility . . .[144] That day, Barry Goldwater won the nomination, but Rockefeller refused to drop out of the race. Ultimately, they both lost in the presidential election of 1964. Yet Rockefeller would try again for the presidency, and after stop-and-frisk went into effect, he changed his focus for the next presidential election in 1968. In the interim, Rockefeller's crime control strategy became more aggressive. He believed it was necessary to "strike rapidly and forcefully both at crime itself, wherever it appears and, before it appears."[145] He pursued a politics of fear, rhetoric of law and order and police reform – all attempts at building support among the conservatives.

Blood Brothers: Harlem Killer Gang Scare

Governor Rockefeller relied on a culture of fear and the media's help to legitimize his anticrime bill. When Rockefeller proposed stop-and-frisk and other measures to the legislature, he spoke about the "facts on crime," emphasizing that the crime rate had grown and alleging that these measures were necessary to save lives. The media helped his case by running endless coverage about crime running rampant throughout New York City. Coverage reached a crescendo after white people were murdered in Harlem and local youth participated in a disturbance known as the "fruit stand riot." Shortly after Rockefeller signed his measures, two white women were killed in Harlem.[146] These murders were tied to a case involving a group of

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[144] Belva Davis, *Never in My Wildest Dreams: A Black Woman's Life in Journalism* (San Francisco: Berrett Koehler, 2010), 4.

[145] "The Crime Statement" June 28, 1968, 1. Rockefeller Archive Center, Series III, NAR Group, 1517 Box 26, Folder 146.

[146] Eileen Johnston, a white social worker, was slain on April 12, 1964 and Margit Sugar was murdered on April 29th in Harlem. See "Writ Denied 3 Boys Indicted in Murder," *New York Times,* July 2, 1964, 26.

Black criminal defendants, famously known as the "Harlem Six."[147] A Black reporter, Junius Griffin, at the *New York Times* wrote that three of the Harlem Six defendants were "Blood Brothers," a Harlem youth gang allegedly dedicated to abusing and killing white people.[148]

In a separate incident, several Black children turned over cartons at a fruit and vegetable stand. After police responded with "pistols drawn and nightsticks swinging," the incident escalated.[149] According to Griffin, "the Fruit Riot set the stage for the expansion of anti-white youth gangs, some of whose members call themselves Blood Brothers."[150] A cover page of the *Times* featured one of Griffin's articles, entitled "Anti-White Harlem Gang Reported to Number 400," in which he claims exclusive access to the Blood Brothers and reveals how their "indoctrination and training come from dissident members of the Black Muslim sect."[151] He claimed that former spokesman for the Nation of Islam, Malcolm X, was their idol and that Blood Brothers attended his meetings and rallies in Harlem.[152] However, Malcolm X offered his own responses to the newspaper at a symposium.[153] "The first time I ever heard about the Blood Brothers," he writes, "it didn't make me sad at all. . . . if such does exist. As far as I'm concerned, . . . the question is, if they don't exist, should they exist? Not do they exist, should they exist?" Malcolm X theorized the source behind the scare related to police brutality. "It's because police brutality exists . . . A black man in America lives in a police state. . . . That's

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[147] Almost a decade later, reporter Patrick Owens wrote that the case against the "Harlem Six" rivaled the classic Scottsboro Boys. See Patrick Owens, "The Justice Machine," *Newsday*, June 19, 1972, B3.
[148] Junius Griffin, "Whites are Target of Harlem Gang," *New York Times*, May 3, 1964.
[149] Junius Griffin, "Harlem: The Tension Underneath," *New York Times*, May 29, 1964, 1.
[150] Griffin, "Harlem: The Tension Underneath," 1.
[151] Junius Griffin, "Anti-White Harlem Gang Reported to Number 400," *New York Times*, May 6, 1964, 1.
[152] Griffin, "Whites are Target of Harlem Gang."
[153] The symposium, "What's Behind the 'Hate-Gang' Scare?," was organized by the Militant Labor Forum of New York and held on May 29, 1964 at the Militant Labor Forum Hall. Junius Griffin accepted an invitation to speak, but withdrew at the last minute. Malcolm X could not attend but provided his written remarks which were delivered by James Shabazz. Malcolm X and George Breitman, *Malcolm X Speaks: Selected Speeches and Statements* (New York: Pathfinder, 1993), 64-71.

what it is, that's what Harlem is . . ."[154] While Malcolm X denied knowing such a group existed, he turned the audience's gaze towards state violence and police brutality in communities of color. For Malcolm X, the press reports of a Harlem gang of Blood Brothers, which raised questions about killer youth and wretched conditions that angered Black residents, simply deflected from the question of who the real criminals were.

Several civil rights organizations and community leaders challenged the state to prove the group's existence. A spokesman for the Board of Education defended Harlem students in a letter to the *Times* editor, writing that "[r]esponsible reporting requires that prior to coupling the schools with the slums and the broken homes, investigation at the source be effected … your newspaper does a disservice to the community and to the city as a whole."[155] The New York branch of the NAACP issued a statement to urge the Attorney General to investigate

> until such time as concrete proof is tendered that an organization such as has been depicted in the press exists, we categorically and unqualifiedly refute these vicious libels and challenge the law enforcement agencies of the city and state to produce the facts to justify the hysteria that has been created.This myth is being propagated by those who would impede the progress of the Negro freedom movement and poison the forum of public opinion.[156]

Marshall England, Chairman of the Manhattan chapter of the Congress of Racial Equality said reports of the anti-white gang in Harlem grossly lacked factual information and that such reports set up Black youth in Harlem to be potential Blood Brothers making them subject to police harassment.[157] That year the *Times* hired Griffin and other Black reporters to "bring more depth

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[154] Ibid., 65-66.
[155] Adrian Blumenfield, "Harlem Schools Defend: Education Board Spokesman Cites Construction Record," *New York Times,* May 13, 1964, 46.
[156] Junius Griffin, "N.A.A.C.P. Assails Reports of Gang," *New York Times,* May 31, 1964, 27.
[157] Junius Griffin, "Grand Jury Investigation Urged into Anti-White Gang in Harlem," *New York Times*, May 10, 1964, 61.

to [. . . [Black] coverage."[158] Griffin later earned a Pulitzer Prize nomination in journalism.[159] Decades after publishing Griffin's stories, former *Times* editor, Arthur Gelb admitted he "harbored doubts" about the Blood Brothers' existence and conceded that he had "not insist[ed] on multiple sourcing before running Junius Griffin's reports that a gang of militant Black youth roam[ed] Harlem streets seeking to kill whites."[160]

These uncorroborated *Times* reports furthered Rockefeller's claim that the police were "engulfed by growing numbers of dangerous criminals." At the beginning of the year, Rockefeller characterized stop-and-frisk and no-knock as bills that were necessary to protect patrolmen. By the time these bills became laws, the *Times* had already circulated a plethora of articles that alleged how the Blood Brothers were planning to attack the police in July to protest the stop-and-frisk and no-knock laws.[161] The *Times* has never retracted the stories of the alleged Black extremist gang in Harlem.

No Direct Line to Black Community

Governor Rockefeller's executive staff was made up of white males. Black leaders expressed concern about the lack of diversity among the staff who were expected to advise him on the racial, ethnic, class and gender implications of new laws. Legendary baseball player Jackie Robinson openly critiqued Rockefeller's administration for its lack of diversity and awareness of Black political concerns. In his autobiography, Robinson noted that "although

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[158] Maynard Institute History Project http://www.mije.org/historyproject/caldwell_journals/chapter9 (last visited Oct 30, 2012).

[159] The Pulitzer nomination in journalism was for Griffin's work at the Associated Press, a thirteen-part series on race relations called, "The Deepening Crisis." Junius Griffin Personal Papers, 1955-1977, Special Collections, The Johns Hopkins University, http://archivesspace.library.jhu.edu/repositories/3/resources/604?advanced=true.

[160] Gelb claims Griffin "insisted that every fact in his stories had been true." Ultimately, Gelb said he found Griffin's sincerity convincing. Robert H. Phelps, "Words & Reflections - Books - Friendships, Feuds and Betrayal in the Newsroom," *Nieman Reports* 58, no. 1 (2004): 70, http://niemanreports.org/articles/friendships-feuds-and-betrayal-in-the-newsroom/.

[161] Junius Griffin, "Harlem: The Tension Underneath," 1.

New York enjoyed a reputation as a liberal state, the higher echelons of the state government were all white."[162] In a letter to the governor, Robinson expressed concern because there were no black people with a direct line to Rockefeller or any that could alert him to the concerns of Black people.[163] After receiving this forceful letter, it took Rockefeller two years to add some racial diversity. In 1964, Rockefeller hired Robinson as an advisor, making him the first Black person to serve at a high-level policy making position.[164] Yet the same year, in Albany, Rockefeller managed to foreclose the concerns expressed by communities of color.

Civil rights leaders and Black community activists were suspicious of Rockefeller's new criminal procedures from the start. Their concerns stemmed from past and recent problems with the NYPD such as unreasonable searches and police brutality. Attorney Ray Williams, chairman of the Legislative Committee of the Brooklyn NAACP, raised concerns soon after Rockefeller proposed the bills. Williams told *Amsterdam News* the bills would egg the "already energetic police to even greater zeal in the community of economically defenseless people."[165] New York's Lawyer Association predicted that enforcement of the new laws would return New York to an era of "Gestapo police methods."[166] With ten years of legal experience, George M. Fleary, the Association's president, had first-hand knowledge of NYPD's prior practices of conducting arbitrary stops and searches. Fleary stated that Black people were the victims of the law because

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[162] In 1964, Governor Rockefeller asked Robertson to become one of six deputy national directors of his campaign. Jackie Robinson, *I Never Had it Made: An Autobiography of Jackie Robinson 1972* (New York: Putnam, 1995), 162.
[163] Robinson, *I Never Had it Made, 162.*
[164] Robinson, *I Never Had it Made,* 162.
[165] "Negro Lawyers To Fight Rocky-backed III: Volker Bill," *New York Amsterdam News*, February 15, 1964, 23.
[166] "Kill the Police 'Gestapo' Bill Before State Legislature," *New York Amsterdam News,* (unknown date).

police routinely targeted people from Black communities for stops and searches while, on the other hand, "there ha[d] seldom been any violation of white property."[167]

Civil Rights Groups Protest Stop-and-Frisk

Civil rights groups immediately organized to protest New York's new stop-and-frisk and no-knock laws—which contradicts Fortner's assertions that a silent majority supported strengthening police powers and punitive laws. Protest methods varied and were derived from diverse groups. On March 2, 1964, the same day that Rockefeller signed stop-and-frisk and no-knock into law, the Political Action Committee of the New York Chapter of the NAACP organized a nonviolent rally on 125th Street and 7th Avenue in Harlem.[168] The *Amsterdam News* reported that it was a peaceful assembly of more than 500 people who demanded an immediate repeal and castigated Rockefeller's laws as unconstitutional.[169]

NAACP activists targeted Governor Rockefeller and aimed to disrupt his private life. Protesters marched to his Manhattan residence, a thirty-two room duplex townhouse on Fifth Avenue, which doubled as the governor's primary office in New York City.[170] Several activists traveled thirty miles from New York City up north to stage another nonviolent demonstration at Rockefeller's home. In upstate New York, they found the bucolic Rockefeller palatial Pocantico Hills estate, a place that founding Rockefellers built and an observer once described as, "a place God would have built if he had the money."[171] The entire Rockefeller clan used this 3,000-acre estate overlooking the Hudson River as their primary residence. There, demonstrators could not

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[167] "Kill the Police 'Gestapo' Bill."
[168] "NAACP Pickets Rocky," *New York Amsterdam News*, March 7, 1964, 6. NYPL Schomburg Center for Research in Black Culture.
[169] "NAACP Pickets Rocky," 6.
[170] "NAACP Pickets Rocky," 6.
[171] Gary Allen, *The Rockefeller File*s (Seal Beach: 76 Press, 1976), 13.

get further than the estate's gate. Major press outlets ignored the demonstration at Rockefeller's "pastoral paradise" just as they ignored the protesters and their concerns.

Other civil rights groups also took to the streets using confrontational direct action tactics. A few days later, on March 6, 1964, Arnold Goldwag, the Director of Community Relations at the Brooklyn chapter of CORE, and six other members, staged direct action at the New York City Police Headquarters in Manhattan.[172] Seven members chained themselves to a railing in the hallway outside of New York Police Commissioner Michael Murphy's office, and refused to leave until their grievances were heard.[173] Several other picketers demonstrated from the outside. According to a detective's surveillance report, there were twenty-five pickets at the peak of the demonstration[174] The picketers marched and loudly chanted, "'Police Brutality Must Go,' 'Murphy and His S.S. Men Must Go,' and 'In Order to Become a Sergeant You Must Have Your Quota of Broken Heads.'"[175] Simultaneous with the Police Headquarter demonstrations, dozens of CORE members formed a human chain across the Manhattan entrance and blocked the Triboro Bridge.

Blyden Jackson and Charles Saunders, leaders from East River Manhattan CORE, created leaflets to explain the rationale for the civil disobedience and distributed them to the inconvenienced commuters.[176] Later, the East River chapter issued a press release concerning the blockades. The *US News* quoted directly from CORE's leaflets: "We regret to inconvenience people passing through our neighborhood on their way home to the better sections of the city, but

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[172] Jack Mallon and Edward Kirkman, "CORE Sitters Snarl Cop HQ and Triboro," *US News*, March 7, 1964, 3; Alfred T. Hedricks, "13 Facing Charges in 2 CORE Protests," *New York Post*, March 8, 1964, 2, Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection, ARC 002, Box 3, Folder 4, Brooklyn Historical Society.
[173] Mallon and Kirkman, "CORE Sitters Snarl Cop HQ and Triboro," 3.
[174] Mallon and Kirkman, "CORE Sitters Snarl Cop HQ and Triboro," 3.
[175] Police Memo on file from CORE, Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection ARC 002, Box 3, Folder 4, Brooklyn Historical Society.
[176] Mallon and Kirkman, "CORE Sitters Snarl Cop HQ and Triboro," 3.

we are both very sorry and very angry [over how] Negro and Puerto Rican [residents] are treated …"[177] CORE's non-violent roadblocks represented a dramatic shift from previous protest tactics. Some leaders believed recent challenges required a change from previous protest techniques and that older techniques involved

> [g]reat marches and boycotts—all useful in their time and in their way[--]for pushing the movement for freedom and equality forward; But [it became] necessary to go to the root of the problem, to organize in local communities to help make the poor visible and vocal in defense of their rights, so they can no longer be ignored by America's commuters.[178]

The protesters intended a public yet private disturbance. The demonstration was public in order to inconvenience the targeted group and capture their attention. The blockades stopped the movement of thousands of people across major public roadways in New York City. CORE's target was privileged white New Yorkers along with New York's politically powerful. The protest was intended to force these people to examine the stakes associated with over and under policing and racial discrimination in Black and Puerto Rican communities. Similarly, the earliest protest movements against stop-and-frisk and no-knock were launched at Rockefeller's workplace and homes and had attempted to force him to face Black discontent from an intimate level.

Local activists also used clandestine means to assert their grievances against stop-and-frisk and other social problems. These activists considered punitive law enforcement practices to be connected to unjust employment policy and economic exploitation. Some trade unions scheduled meetings with Rockefeller in Albany. Several grassroots activists had forged ties with these unions and combined their efforts to protest. Consequently, American labor movement leader, A. Philip Randolph; leader of the rent strikers, Jesse Gray; the NAACP and other groups

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[177] Mallon and Kirkman, "CORE Sitters Snarl Cop HQ and Triboro," 3.
[178] "East River CORE Press Statement," March 6, 1964, 1-2. Arnie Goldwag Papers, ARC 002, CORE Collection, Brooklyn Historical Society, Box 3, Folder 4.

led more than 3,000 people to march in Albany to dramatize the hypocrisy between Rockefeller's liberal reputation at the national level and his anti-liberal legislation at the local level.[179]

In April, community activists snuck into a meeting with Governor Rockefeller and trade union leaders in Albany. At the meeting, unionists accused the governor of "play[ing] the part of a 'liberal' Republican" candidate for president in the various state primaries, but noted that he left behind "an image bearing scant relationship to the brotherhood of man" in New York.[180] Trade unions and civil rights activists demanded more liberal legislation as well as a repeal to Rockefeller's anticrime bill. The activists brought up "the notorious 'no-knock' and stop and frisk' laws which [were] blasted even by the New York State Bar Association as conducive to establishing a police state atmosphere in which Negroes and Puerto Ricans [would] suffer most."[181] However, Rockefeller flatly refused to consider their demands and abruptly brushed aside their proposal to repeal stop-and-frisk legislation as he walked out on the meeting. Spokesmen for the community and various organizations considered the Rockefeller's rigidly unyielding attitude the cause of an explosive stalemate.[182]

CORE's protest against stop-and-frisk intertwined with several civil rights demonstrations against police abuse and discrimination in employment and housing.[183] While fighting the passage of Rockefeller's anticrime laws, the Brooklyn chapter of CORE weighed

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[179] "Unionist Rip Rockefeller's Back Down on Rights," *Muhammad Speaks*, April 10, 1964, 14. Schomburg Center.
[180] "Unionist Rip Rockefeller," 14.
[181] "Unionist Rip Rockefeller," 14.
[182] "Unionist Rip Rockefeller," 14.
[183] Western Union Telegram to NYC Mayor, Robert Wagner, from Jerome Bibulb, April 9, 1964, 1-3. Brooklyn CORE; Brooklyn CORE demanded the city "implement a comprehensive program . . . [to] end police brutality, abolish slum housing, integrate construction" industries and schools or CORE demonstrators would "immobilize all traffic leading to the World's Fair."; Western Union Telegram to Robert F. Moses, Director of Worlds Fair, from Isaiah Brunson, April 9, 1964, 1-3, Chairman Brooklyn CORE; Western Union Telegram to Stanley Steingut, from Brooklyn CORE, April 14, 1964, 1. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection ARC 002, Box 5, Brooklyn Historical Society.

demonstration options and shifted towards "more severe direct-action methods" to protest New York's World Fair on opening day, April 22, 1964.[184] Isaiah Brunson, Chairman of Brooklyn CORE, suggested staging a car stall-in. Twenty-two-year-old Brunson from Sumter, South Carolina, had joined Brooklyn CORE the previous summer during the Downstate protest against racial discrimination in the construction trade.[185] According to historian Brian Purnell, "Brooklyn CORE, which had a reputation for militancy, could not be the public face for this protest because its members did not carry the same moral or political clout" as ministers.[186] A local Black minister, Reverend Dr. Milton Galamison, also a prominent leader in the New York City public school desegregation movement, knew of Brunson's work. Reverend Galamison described for the *New York Times* Brunson's creative mind and innovative tactics that often captured media focus. "He is always thinking. He is entirely devoted. And he is very sharp."[187] Dr. Galamison said Brunson was behind the plot to stall cars on roads leading to the Fair. Arnold Goldwag also helped brainstorm organized protests. Collectively, Brooklyn CORE leaders objected to the Fair, considering it "a symbol of American hypocrisy." CORE ran a public campaign against the Fair, producing various types of fliers in order "to put on display the grievances of 22 million American Negroes living in the agony of [f]ifth-class citizenship both North and South."[188] CORE's goal was to contrast the "*real world* of discrimination and brutality experienced by Negroes [in the] North and South with the *fantasy world* of progress and abundance shown in the official pavilion." The members considered what placing their bodies in

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[184] See Memorandum from Bronx and Brooklyn CORE to the Officials of New York City and the General Public, 4 April 1964, Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection ARC 002, Box 5.
[185] For more complete coverage of direct action at Downstate, see Brian Purnell, *Fighting Jim Crow in the County of Kings: The Congress of Racial Equality in Brooklyn* (Lexington: University Press of Kentucky, 2013), 209-247.
[186] Purnell, *Fighting Jim Crow in the County of Kings*, 224.
[187] Joseph Lelyveld, "CORE in Brooklyn: A Small Army on the Move," *New York Times*, April 21, 1964.
[188] CORE flyer, "How CORE Views the Fair: Symbol of American Hypocrisy," April 1964. Arnie Goldwag Brooklyn Congress of Racial Equality (CORE) Collection ARC 002, Box 5, Brooklyn Historical Society. [hereinafter "How CORE Views the Fair" Flyer]

this fantasy world could mean. The flyer further stated: "[w]e submit our bodies—from all over this county—as witnesses to the tragedy of the Northern ghetto, as witnesses to the horror of Southern inhumanity and legalized brutality"[189]

The ACLU defended the use of civil disobedience and protest tactics by CORE and other New York activists. In a statement on Civil Rights demonstrations and the history of American protest, the organization distinguished lawful public disobedience, protected by the U.S. Constitution, from the disorder caused by white racists who breached the peace due to desegregation, competition or merely the presence of Black people.[190] Citing the First Amendment, the ACLU determined it "unthinkable that the constitutional right to demonstrate peaceably should be abridged by the least tolerant element in the community."[191]

The ACLU disagreed with government officials and editorial writers who rebuked civil rights demonstrations. The ACLU asserted, "the majority that has dominated the American society and its law-making machinery for the past century cannot escape responsibility for the years of callous indifference to the demands of non-white citizens."[192] The ACLU argued this indifference created the frustration that led to the demonstrations. Furthermore, the ACLU contended that the type of protest techniques that Black people engaged in were necessary "means of resolving deep-seated problems" and derived from fundamental rights protected by the U.S. Constitution. It found the loss of these fundamental rights posed "dangers of a much higher order."[193] In the final analysis, the ACLU argues that redress of grievances becomes the

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[189] "How CORE Views the Fair" Flyer.
[190] "How Americans Protest," American Civil Liberties Union, August 1963, 1-15, "Civil Liberties Religious freedom/Academic freedom 1963-1965" ARC 002, Arnie Goldwag, Brooklyn Congress of Racial Equality, CORE Box 1 Folder 17.
[191] "How Americans Protest," 13.
[192] "How Americans Protest," 4.
[193] "How Americans Protest," 3.

life behind people's right to protest. By employing this time-honored American right, the people also activated a movement that created an awareness of the extent of deprivation, as well as the justice of their cause, that previously did not exist among their countrymen. Yet ignorance of these matters persists, sometimes from . . . conscious self-deception[,] but more often from an unreal sense of distance and non-involvement in the issues.[194] Thus CORE's protest tactics to disrupt the lives of private individuals attempted to close the gap of distance between those with privilege and those being oppressed.

As the date of enforcement of the new laws grew closer, on May 15, 1964, over 300 people joined the Brooklyn Chapter of CORE to picket a Brooklyn precinct with signs that read, "New York's Finest is New York's Worst" and "It will be Worse after July 1st," which was the date when stop-and-frisk and no-knock would go into effect.[195] It was not only civil rights organizations that opposed the new laws. Critics included prominent legal organizations. Assemblyman Mark Southall, chairman of the Upper Manhattan Action Committee, met with the New York State Trial Association, the Harlem Lawyers Association and the State Trial Lawyer Association to strategize a possible test case on the search and seizure laws and declare the bills signed by Rockefeller as unconstitutional.[196]

Police Leadership Criminalizes Civil Rights Protests

The New York Police Commissioner, Michael J. Murphy, was particularly set on criminalizing civil rights protests, activism against punitive criminal procedure laws and increasing police search and seizure powers. In March 1964, Murphy announced that civil rights

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[194] "How Americans Protest," 4.
[195] "Cries Against Police Brutality Are Part of a Communist Plot to Hinder New York Cops," *The Militant*, May 25, 1964, 3; Bob Greger, "Brooklyn Negros Charge Cop Tried to Choke Woman," *The Militant*, May 25, 1964, 3. Arnie Goldwag Papers, ARC 002, CORE Collection, Box 3, Folder 4.
[196] "Powell Speaks at Rally," *New York Amsterdam News*, April 11, 64.

leaders would not be allowed to "turn New York City into a battle ground."[197] Murphy publicly dismissed several civil rights activists' complaints of police brutality, misconduct and using horses as excessive force during demonstrations; he referred to them as "hypocrisy and hate-rousing of the lowest type." He considered demonstrators to be the real criminals and accused them of "mass libel of the police."[198] Frustrated with Murphy, CORE members and supporters demonstrated outside of his home in Queens chanting songs like, "No More Beating Over Me" and carrying signs that read, "Who Can Protect Us from Racist Cops" and "No More Bull Murphy."[199] For two hours, at least seventy-five uniformed and plain-clothes policemen watched the peaceful Black protesters get heckled by several white youth, none of whom were arrested.[200] In an extraordinary protest, CORE succeeded in shutting down the police headquarters in Manhattan on May 6, 1964 by staging a sit-in to protest police brutality.[201] Protests continued after the new laws went into effect. On March 23, 1965, the NAACP, for example, sent a delegation of one thousand people to Albany to demand that Rockefeller repeal stop-and-frisk."[202]

Conclusion

Protest has always been an integral part of the law in all of its forms, and resisting greater police search and seizure powers overlapped struggles against brutality, unjust prosecutions and incarcerations. Residents of New York City's Black, Puerto Rican and poor neighborhoods

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[197] "CORE Pickets Murphy's Home," (Unknown paper) March 21, 1964. Newspaper Clippings, Arnie Goldwag Papers, ARC 002, CORE Collection, Box 3, Folder 4.
[198] "CORE: It's Brutality; Cops Reply: Hypocrisy," *New York Daily News*, November 20, 1963, 5. Arnie Goldwag Papers, ARC 002, CORE Collection, Box 3, Folder 4.
[199] "A CORE Demonstration at Police Chief's Home," *New York Herald Tribune*, March 21, 1964, 3. Arnie Goldwag Papers, ARC 002, CORE Collection, Box 3, Folder 4.
[200] "CORE Pickets Murphy's Home,"
[201] Arthur Rosenfeld, "Headquarters Police Seize 7 CORE Sit-Ins," *New York Post,* March 6, 1964, 3. Arnie Goldwag Papers, ARC 002, CORE Collection, Box 8, Folder 5.
[202] "NAACP 11-Point Plan Slated for Legislature," *New York Amsterdam News,* March 13, 1965, 9.

voiced strong opposition to New York state's punitive turn in the early 1960s. Rockefeller's push for stop-and-frisk and no-knock invoked so much anxiety that these communities considered them fortifications of a police state and a Gestapo police. Consequently, Black and Brown New Yorkers, joined by several civil rights organizations, launched protests immediately after Rockefeller proposed stop-and-frisk and no-knock bills in January 1964. His support for stop-and-frisk overlapped his general policy of criminal justice reform. While police unions and law enforcement leaders worked with him for these new criminal procedure policies, the laws ultimately depended on his support. These new laws derived from his personal interests along with his desire to see real public gains.

Biographers Michael Kramer and Sam Robert interviewed Nelson Rockefeller and key members of his staff to unravel the driving ambition behind his career of over 40 years. They argue that "Rockefeller utilized the vast, often hidden resources of Rockefeller wealth and influence to achieve his political triumph . . ."[203] For 15 years he had been governor of New York, providing what Kramer and Robert describe as "a record of activism unparalleled in the state's history."[204] Rockefeller achieved reelection from voters by commingling a unique confluence of political and financial power. The state's Republican Party had been a subsidiary of the Rockefeller family (much like the Rockefeller Foundation and Rockefeller University). The legislature, when dominated by the Republicans as it had been for 13 of the 15 Rockefeller years was no "more than a rubber stamp."[205] State politicians were reluctant to cross Rockefeller because they feared reprisal. New York Senator Jacob Jarvis once said, "nothing stands in

[203] Kramer and Robert, *I Never Wanted to Be Vice-President of Anything!*, ix.
[204] Kramer and Robert, 7.
[205] Kramer and Robert, 7.

Rockefeller's way . . . Nothing. He always gets what he wants."[206] Every decision he made was aimed at moving himself another step closer to fulfilling his aspiration of becoming president.

When a news-reporter asked Rockefeller when had he first thought about becoming president of the United States, Rockefeller responded, "[e]ver since I was a kid. After all, when you think of what I had, what else was there to aspire to?"[207] During what was arguably the most tumultuous decade of the country since the Civil War, Rockefeller actively sought the presidency. He ran three times between 1960 and 1968 and lost each time. When Rockefeller proposed stop-and-frisk, no-knock and other measures in 1964, he shifted his agenda towards building a carceral state by increasing the state's capacity to police and cage.[208]

For most Black people, stop-and-frisk became synonymous with police abuse and brutality. Thus members of the Black community joined members from the New York chapters of NAACP and CORE to picket in front of several of Governor Rockefeller's homes. Assemblyman Thomas R. Jones said the bills would act "as a green light for police in Negro and Puerto Rican neighborhoods, principally Harlem and the Bedford-Stuyvesant areas, to run roughshod over the legal rights of these people."[209] Stop-and-frisk went into effect on July 1, 1964, despite the repeated civil protests.

Activists and Black communities demanded an immediate repeal, seeing the new law as a symbol of oppression. Harlemites and Brooklyn residents repeatedly stood up, rallied, marched

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[206] Kramer and Robert, 8.
[207] Kramer and Robert, 3.
[208] Kelly L. Hernandez, Khalil G. Muhammad, and Heather A. Thompson, "Introduction: Constructing the Carceral State," *Journal of American History* 102, no. 1 (2015): 18-24; While mass imprisonment is a central topic among historians and sociologists of punishment, less is known about the prison boom which began in 1970 after U.S. prison facilities tripled in number. Nearly 70 percent of the new facilities were built in rural areas. Eason considered where and why prisons were built in rural areas and argues they altered the physical, social, economic and political landscape of America. John M. Eason, "Reclaiming the Prison Boom: Considering Prison Proliferation in the Era of Mass Imprisonment," *Sociology Compass* 10, no. 4 (2016): 261-271.
[209] "NAACP Pickets Rocky," *New York Amsterdam News*, March 7, 1964, 6.

and demonstrated in front of City Hall, the local precinct, and the homes of the Governor, Mayor, Police Commissioner and judges. The relentless protest from the Black community caused Commissioner Murphy to issue guidelines that mandated police to apply stop-and-frisk "courteously, correctly and constructively for the greater protection of the people."[210]

Less than three weeks after the laws went into effect, the Harlem Riot of 1964 exploded when a white police officer stopped and shot to death a 15-year-old Black boy, James Powell.[211] After the shooting, William Epton, chairman of the Harlem chapter of the Progressive Labor Movement, accused Rockefeller, Wagner and Murphy of "using fascist laws against Black people," specifically referring to no-knock and stop-and-frisk as the Black Codes of the North.[212] Epton made the speech immediately before the July 18th riot erupted. Subsequently, law enforcement authorities blamed Epton for inciting a riot, and NYPD officers arrested him for defying an injunction that banned demonstration in Harlem.[213] A year after police began enforcing the law, Attorney Ray H. Williams and chairman of the NAACP Brooklyn Legal Redress Committee, noticed racial peculiarity in police surveillance, commenting, "as things now stand, people in the lower economic areas feel that the police are occupying their lives and privacy."[214]

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[210] "New Search Laws Going into Effect," *New York Times*, June 30, 1964, 11.

[211] A massive public demonstration against police brutality was organized by CORE and the police's violent response to the demonstrators instigated the New York riot, which spread from Harlem to Bedford Stuyvesant in Brooklyn. McDonald, *Urban America*, 135.

[212] Les Mathews, "A Close up of William Epton," *New York Amsterdam News*, August 15, 1964, 46.

[213] Skolnick, *Justice Without Trial*.

[214] Williams was also co-counsel to George Whitmore Jr., the defendant charged with murdering a woman and the attempted rape of another. Williams cited the Whitmore case as a "prime example of police excess."; "Lawyer Has Few 'Do's' For Police," *New York Amsterdam News*, May 22, 1965.

CHAPTER SIX
CONCLUSION

> The whole history of progress of human liberty shows that all concessions yet made. . . . have been born of earnest struggle. . . If there is no struggle there is no progress. . . .This struggle may be a moral one, or it may be a physical one, and it may be both moral and physical, but it must be a struggle. Power concedes nothing without a demand. It never did and it never will. Frederick Douglass, Speech Before the West Indian Emancipation Society, August 4, 1857.[649]

A century after Frederick Douglass, abolitionist and pioneering feminist, gave his speech on earnest struggle, a woman of color stood up against unreasonable police search and seizure practices. Dollree Mapp challenged the Cleveland police's for a warrantless entry and search of her Ohio home in 1957. The illegal search lasted for three hour and involved sexual harassment, an officer reached down Mapp's blouse. Eventually police seized evidence and arrested Mapp for possession of lewd material, a felony that carried over a year in prison. Mapp encountered grueling police interrogation and detention. In local criminal court, she faced over prosecution, expensive attorney fees, excessive high bail, court delays, and ultimately an all-white jury that ultimately convicted her as charged. The judge imposed a mandatory sentence of seven years in prison. Applying a critical race and intersectionality lenses, this dissertation demonstrates racial segregation, classism and sexism made Mapp, like most Black people around the nation, vulnerable in the criminal justice system.

Mapp's resistance to various modes of oppression had several unintended consequences. By appealing to the U.S. Supreme Court, Mapp brought the Fourth Amendment under scrutiny. When it came to criminal justice matters, the Supreme Court was in flux whether federal rights

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[649] Philip S. Foner, *The Life and Writings of Frederick Douglass.* (New York: International Publishers, 1950) 437. Quoted in *Race Law Cases, Commentary and Question*, F. Michael Higginbotham (Durham: Carolina Academic Press, 2001) 433.

under the U.S. Constitution were enforceable in state courts. Did the Fourth Amendment guarantee Mapp a right to privacy and protection from local police "unreasonable search and seizure" practices? Should Ohio courts sanction police for the warrantless entry and search of her home? Cleveland's police, local prosecutors and criminal court judges had considered no the answers to these questions. Mapp's challenge had another unintended consequence. It caused the U.S. Supreme Court to reexamine the Fourth and Fourteenth Amendment, a Reconstruction amendment, which extended civil and legal protections to formerly enslaved people in all states. Thus law enforcement agencies, lawyers, advocates and civil rights groups anxiously awaited the Court's decision.

When in 1961 the Supreme Court ruled in Mapp's favor, it sent reverberations across the nation. It was the first time in history the Supreme Court would regulate state criminal procedure, and sanction local police violations. The Court applied federal rights under the U.S. Constitution to criminal defendants in state courts and imposed an exclusionary rule that required state judges to dismiss all evidence police seized illegally, without a warrant or probable cause. The Court used the "equal protection clause" from the Fourteenth amendment to extended Fourth Amendment right to all citizens, and set in motion what some scholars have called the judicial revolution.

However this research demonstrates the ruling was revolutionary, but not for reasons scholars commonly overlooked. At the time, the majority of states had already shifted to require law enforcement to obtain a warrant or establish probable cause had existed before conducting a search. The Supreme Court was consistent with that criminal procedure trend in states. However, the case became revolutionary because of what New York's law enforcement leaders

and Governor Nelson Rockefeller did immediately after the *Mapp* decision. They complained that judicial decisions on search and seizure tied the hands of police and usurped powers exclusively reserved for state. Thus narratives of stop-and-frisk began, first to simplify unclear Supreme Court law, and then to protect the policeman in the field, who was at the frontline of danger. Rockefeller saw an opportunity to exploit law enforcement leadership, gaining support from well-connected police unions, as he ran for U.S. President.

On the group, NYPD routinely flouted the *Mapp* decision, causing residents to continuously battle Fourth Amendment violations in Black communities throughout New York. Between 1961 until 1963, members of the Nation of Islam (NOI) fought tirelessly against harassing police stops and unreasonable searches. On multiple occasions law enforcement agents entered Mosques, disrupting religious ceremonies, without warrants and made arrests that lacked probable cause. These encounters often involved police brutality, arrests and prosecutions. In post-*Mapp* New York, the NOI press and Malcolm X were outspoken voices, exposing and resisting unreasonable search and seizure and police brutality. The NOI leaders also pushed courts to grant criminal defendants greater rights. This advocacy resulted in local judges granting free legal representation for several NOI members on trial, well before the Supreme Court decided *Gideon v. Wainwright,* which gave poor criminal defendants the right to free counsel, and made the Sixth Amendment applicable in states.[650] The NOI also collaborated with other religious groups and civil rights advocates to strengthen civil rights.

NYPD violations of *Mapp* and Fourth Amendment caused Black residents to turn to civil rights organizations for redress. In 1963 alone, local chapters of CORE took up many of these

[650] 372 U.S. 335 (1963).

fights. Leaders at the Brooklyn CORE chapter developed savvy forms of resistance. After NYPD officers entered Johnny Ruiz's home without a warrant and beat him, Brooklyn CORE used writing as a form of resistance, exposing crucial details about the offending officer and encouraged the community to protest demonstrations at the local precinct. Through investigative activism Brooklyn CORE forced local prosecutors to investigate the police fatal shooting of Morris Lewis, an eighteen year-old Black youth, and arrest of his sister. Here the Brooklyn chapter's own investigation uncovered inconsistencies in police reports. The Chairman of Brooklyn CORE, Isaiah Brunson documented inconsistencies in the state's narrative regarding the Lewis shooting, apartment search and seizure. Arnold Goldwag, a Brooklyn CORE leader and spokesman, used the press to expose these inconsistencies, and question police use of excessive force. Brooklyn CORE's advocacy resulted in a grand jury investigation of the police conduct. Eventually, New York City settled the Lewis family's million dollar civil lawsuit. NYPD officers simulated a lynching to torture Jesse Roberts, a successful Black business owner from the Bronx. Bronx officer entered his business without a warrant, violating his Fourth Amendment rights, and conducted an illegal search. The police alleged they recovered marijuana from Roberts' business and used this as the basis for his arrest. The Bronx chapter of CORE took on Robert's case and cited the *Mapp* case explicitly to challenge police unlawful search and seizure. Despite the Bronx chapter's activism, the local District Attorney officer and criminal judge used the illegally seized evidence against Roberts at trial, which ended in a conviction. However, the National office of CORE used facts gathered from their investigative activism of Roberts' case to argue for a Civilian Complaint Review Board (CCRB) to evaluate police misconduct. Local police unions fought tirelessly against any

progress in the area. By the beginning of 1964, Rockefeller managed to foreclose these Black concerns and anti-police brutality activism.

In 1964, during a contested presidential election year, Rockefeller proposed an anti-crime bill, a major criminal procedure reform, that included stop-and-frisk. He said a new statute was needed to clarify police authority after *Mapp.* His public announcement added that crime was escalating faster than the population increase. But this seemed disingenuous because, at the time, the crime rate was not greater than what it had been a decade prior. This was about the liberal governor attracting rightwing support at the national political level. Conservatives had considered him a "villain for the right." In 1964, Rockefeller would run for president, a second time, and during the campaign year, he used New York's stop-and-frisk to signaled anti-sentiments for the Supreme Court's expansion of rights for criminal defendants. More broadly, this new law marked the launch of Rockefeller's punitive criminal agenda, much earlier than his 1970's drug laws.

The statute contained race-neutral language that conservative law enforcement officials and the NYPD wanted. This novel language would allow police to conduct searches and seizures based on mere "reasonable suspicion." Prior to *Mapp*, New York police routinely conducted searches and seizures without a warrant or probable cause. A successful police professionalization movement had caused New York courts to defer to police expertise on issues of field investigations, including civilian stop and search encounters. However, with the *Mapp* decision the Supreme Court took this deference away, and required state courts to exclude evidence illegally seized. Thus after *Mapp*, criminal convictions in New York City dropped

immediately, causing conservative law enforcement leaders to argue crime rates had risen and that stop-and-frisk law would make police investigation and arrest procedures much easier.

While Rockefeller and law enforcement officials claimed violent crime was rising, they ignored the growing drug abuse in Black communities throughout New York City. The Black radical press highlighted the drug epidemic and criticized Rockefeller and police leadership for not adequately addressing non-violent drug crimes. Thus Harlemites launched their own citizen's war against drugs, and caused Rockefeller to support drug rehabilitation policies. But as the drug epidemic persisted, some Black leaders supported punitive policing efforts. Rockefeller found support from these Black leaders for his new stop-and-frisk law.

The white mainstream press supported Rockefeller's claim that crime was rising. The *New York Times* ran a series of exclusive stories on the "Blood Brothers," an alleged gang of Black youth, who vowed to harm white people and police in Harlem. These stories targeted Black youth and claimed the Nation of Islam and Malcolm X had trained them for self-defense. The *Times* also alleged these Black youth had murdered white women and business owners in Harlem. These stories were uncorroborated yet the *Times* published them, just as Rockefeller made an uncorroborated claim that violent crime was on the rise in New York. Both narratives played on public fears of crime, but also targeted the Nation of Islam, Black expressions of self-determination and radical Black politics.

Immediately after Rockefeller proposed stop-and-frisk, leaders from Black communities and civil rights organization launched vigorous protests. They used postwar rhetoric to describe the new, fearing it would empower the NYPD to function as a Gestapo. They also predicted police would target Black communities while enforcing stop-and-frisk. Black New Yorkers

joined picket lines, marched and demonstrated at the homes and offices of Governor Rockefeller and the New York City Police Commissioner. In a bold effort of protest, CORE members shut down the Police Headquarters as members conducted a sit-in at the Commissioner's office. Other members of CORE stopped traffic into the City by laying down across a major bridge. and even the police commissioner's feared the real-life stakes of a police stop-and-frisk encounter. After less than two and a half hours of deliberation, the New York legislature passed stop-and-frisk, lowering the legal standard that *Mapp* had required police to have to conduct searches. Rockefeller signed it into law. The new laws went into effect one day before Congress passed the Civil Rights Act of 1964.

New York v. Miguel Rivera: "Mapp is no Emancipation Proclamation"

Nine days after stop-and-frisk law went into effect, the New York Court of Appeals issued an opinion in *New York State v. Rivera* to validate the police procedure and practice.[651] On July 10, 1964, New York's highest court ruled it legal to admit evidence recovered by police even if based on an "unreasonable search and seizure," and indirectly rejected *Mapp's* probable cause standard and warrant requirement which had strengthened Fourth Amendment rights of residents. The *Rivera* case began on May 25, 1962 at 1:30 in the morning when a New York City detective stopped-and-frisked Miguel Rivera, a twenty year-old male, in front of a bar and grill on 7th Street and Avenue C.[652] Detective Hugh Bennett of the 9th Squad recovered a gun

[651] 14 N.Y. 2d 411 (1964).

[652] Detective Hugh Bennett, "Affidavit--Concealed Firearm" City Magistrates' Court of City of New York, May 25, 1962. Miguel Rivera Case file, Office of District Attorney N.Y. County, Record of Cases 1952-1966, Case no. 513409, New York City Municipal Archive, New York , NY. [hereinafter Bennett Affidavit].

and arrested Rivera. The Manhattan District Attorney's Office prosecuted Rivera under felony charges, and a Grand Jury indicted him for "Criminally Carrying a Loaded Pistol."[653]

Based on the civil liberties granted by *Mapp*, Rivera challenged the police search in criminal court. There Rivera was found guilty despite arguing that detective Bennett lacked "probable cause" for the search and, therefore, the gun taken was inadmissible in court. On appeal, however, the New York Supreme Court ruled in Rivera's favor and overturned his 1962 conviction. Subsequently, the state appealed the decision. New York's highest court decided to reconsider Rivera's case and the prosecutor argued to reinstate his conviction stating that the "*Mapp* decision was not the *emancipation proclamation*" for Rivera.[654]

Although the stop-and-frisk statute had not existed during the initial street encounter, New York's Court of Appeals addressed the recently passed statute through *dictum*.[655] The *dictum* had the effect of resolving the question of the statute's constitutional merit and found that it gave police a new legal standard—one far *less* than probable cause—to stop and search individuals based on a mere "reasonable suspicion" of crime. This jurisprudence once again made it easier for police to search people and seemed designed to increase arrests, convictions and incarceration rates in the city. Rivera's case was never challenged before the U.S. Supreme Court; therefore, the New York Court of Appeals had final say on the law.

ACLU Stop-and-frisk Activism and Civilian Complaint Review Board

With stop-and-frisk in effect, thousands of Black, Puerto Rican and young people turned to the New York City branch office of the ACLU (NYCLU) to seek redress against harassing

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[653] Miguel Rivera Indictment, No. 2166-62, A True Bill, the Grand Jury of the County of New York. New York Municipal Archives, New York, NY.

[654] Edith Evans Asbury, "Police Sustained in Right to Frisk: Appeals Court Rules Act a Defensive Measure," *New York Times* July 11, 1964, 11.

[655] Based on detective Bennett's testimony at Rivera's criminal trial, the Appeals Court determined that Bennett used common law practices as the basis to stop and search Rivera.

police encounters. Paul G. Chevigny a staff attorney at NCLU documents much of the early examples of stop-and-frisk police abused their authority with regular impunity. Between 1965 and 1967, Chevigny interviewed hundreds of New Yorkers who complained about harassing police stops, unreasonable searches, brutality and unlawful arrests. He represented these victims before the Civilian Complaint Review Board. Based on his observations at those hearings, Chevigny wrote a Police Complaint Handbook. In the Handbook Chivagny explained:

> The policeman feels that he personifies the authority of law and order in the neighborhood, and a threat to him is, quite literally, a threat to order. It is as concrete a crime as theft and a good deal easier to solve. Every person who threatens order is the equivalent of a criminal, and should be convicted. It follows that a policeman is likely to invoke legal sanction against any person who defies his authority, no matter how respectable that person is. Defiance makes policemen lose their heads. People who are not respectable are in themselves threats to good order. The more deliberately they affront respectability, the more the policeman resents them (e.g. student revolutionaries are more resented than rummies).[656]

During the early part of 1966, New York City Mayor John Lindsay revised the existing police-dominated CCRB. He gave a majority of the seats on the Board to citizens who were not officials with the New York City Police Department. This was short lived because the police union fought back by sponsoring a referendum. On November 8, 1966, voters abolished the CCRB by a margin of two to one.

Police Stops and Riots

Unreasonable police stop and search practices precipitated several urban uprisings of the 1960s.[657] Less than two weeks after police enforcement of New York's stop-and-frisk law members of Harlem began rioting. The community eruption followed a street encounter on the

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[656] Paul G. Chevigny, Staff Attorney, *NYCLU Handbook of Police Complaints* September 24, 1968, 1-2.
[657] John F. McDonald, *Urban America: Growth, Crisis, and Rebirth*. (Armonk: M.E. Sharpe, 2008) 134-154; Robert H. Connery ed. *Urban Riots: Violence and Social Change*. (New York: Columbia University, 1968); Doug McAdam, "Tactical Innovation and the Pace of Insurgency." *American Sociological Review* 48 (1983): 735-754.

Upper Eastside of Manhattan, when a white officer, Lieutenant Thomas Gilligan fatally shot a 15-years-old Black boy, James Powell on July 16, 1964.[658] Two days later, Harlemites began a riot that lasted three days and spread to Brooklyn's largest Black neighborhood, Bedford Stuyvesant. The Grand Jury did not find Gilligan guilty of any crime. Harlem and Brooklyn CORE members along with their children helped distribute thousands of flyers that featured Gilligan's image and read, "Wanted for Murder." Consequently, NYPD detectives used stop-and-frisk authority to questioned several youth to find the persons responsible for its creation. Ironically, a day short of the one year anniversary of Powell's shooting, another white policeman gunned down Nelson Erby, a Black man. Patrolman Sheldon Liebowits stopped Erby because he appeared "suspicious." A grand jury also determined no evidence existed to charge officer Liebowits in the shooting. The Harlem Defense Council created a "wanted poster" featuring Liebowits and distrusted those flyers in the community.

In the Watts section of Los Angeles, police officers stopped and abused Marquette Frye, a Black motorist. His police encounter became a flashpoint for anger and precipitated a five day riot that cost 200 million dollars in property damage and killed 34 Black Angelenos.[659] The "long, hot summer" of 1967 brought unprecedented violence with major riots in Detroit and Newark.[660] In Newark, police stopped and beat and arrested James Smith.[661] The Newark riot

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[658] McDonald, 135. A massive public demonstration was organized by CORE against police brutality and the police's violent response to the demonstrators instigated the New York riot, which spread from Harlem to Bedford Stuyvesant in Brooklyn.

[659] Gerald Horne, *Fire This Time: the Watts Uprising and the 1960s*. (Charlottesville: University Press of Virginia, 1995). McDonald, 137; Paul Jacobs, *Prelude to riot: a view of urban America from the bottom*. (New York: Random House, 1967).

[660] Manning Marable, *Race, Reform and Rebellion: the Second Reconstruction in Black America, 194-1990*. (London: University Press of Mississippi, 1991) 93.

[661] Tom Hayden, "The Occupation of Newark" *New York Review of Books*. August 24, 1967; T. J. English, *The Savage City: Race, Murder, and a Generation on the Edge*. (New York: Harper Collins, 2011).

began over the Black community's frustration with police harassment, and several unprosecuted police brutality incidents.[662]

Black sociologist, L. C. Gould examined the Black crime rate following riots and determined they were misleading. In his address at the 60th Annual meeting of the American Sociological Association, he pointed out that Black crime statistics are usually misleading and are "loaded against [Black people] as opposed to whites, against the poor as opposed to middle class citizens, against men as opposed to women and against young people as opposed to older adults."[663] He contended the crime rate was linked to police hyper surveillance of Black and poor people. He found "the real serious reasons behind violence and outbreaks like the Watts riot in Los Angeles are missed." What took place in Harlem and Watts were not class based crimes. According to Gould, "criminal activity is rather evenly distributed throughout the population." He added "even rioting and looting are classless crimes", citing riots on both the Atlantic and Pacific coast in which "middle-class whites [we]re almost the only culprits" as proof that criminologist often overlooked white middle-class violence and outbreaks.

Police enforcement of stop-and-frisk and practices in New York drew national attention. Post-riot government reports, notably McCone and Kerner Reports, revealed systemic police misconduct in New York, as well as other large urban centers.[664] President Lyndon Johnson created the Commission on Law Enforcement to investigate crime and also police conduct in urban areas (1965-1967). The Commission examined New York City and found that police

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[662] Kevin J. Mumford, *Newark: a History of Race, Rights, and Riots in America*. (New York: New York University Press, 2007). Joseph Boskin, "The Revolt of the Urban Ghettos, 1964-1967." *The ANNALS of the American Academy of Political and Social Science*. 382 (1969): 1-14.

[663] "Top Criminologists' View Ghetto Crime Outgrowth of Oppression" *Muhammad Speaks*, September 24, 1965, 4.

[664] The Kerner Commission Report lists law enforcement practices as the top problem, along with unemployment and underemployment, discriminatory justice practices, and poor housing.

conducted searches in 81.6 percent of their reported street stops, while in high crime areas of Boston, Chicago, and DC only 20 percent of civilian police encounters involved actual stops, and of those only 33 percent involved searches.[665] The prevalence of police harassment in the Black community led concerned Black youth to found the Black Panther Party (1966), which spread to northern and southern cities.[666]

NY Prison Proliferation

After stop-and-frisk enforcement, New York City experienced an increase in arrests, which also caused overcrowding of local jails.[667] The police used the new tool to funnel more people into the criminal justice system. By the last quarter of 1964, arrests increased 20.8 percent in New York from a similar period of the previous year.[668] This spike led to a dramatic increase in New York City's local jail population. Rockefeller's general counsel noted New York's prison population increase coincided with enforcement of stop-and-frisk. Between 1964 and 1969 an excess of six thousand prisoners were transferred from NYC to upstate facilities. The Mayor also attributed "increase to a rise in arrests resulting from implement[ing] the new crime control programs."[669] He proposed the state build additional prison facilities. In 1969 alone, 1,000 city prisoners were transferred to state correctional institutions.[670]

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[665] The President's Commission on Law Enforcement and Administration of Justice 185 (1967).

[666] Stokely Carmichael and Charles Hamilton, *Black Power: the Politics of Liberation.* 1967 (New York: Vintage Books, 1992);Bobby Seale, *Seize the Time: the Story of the Black Panther Party and Heuy P. Newton*. 1970 (Baltimore: Black Classic Press, 1991); Heuy P. Newton, *Revolutionary Suicide*. 1973 (London: Penguin, 2009); Assata Shakur, *Assata: An Autobiography*. 1987 (Chicago: Lawrence Hill Books, 2009).

[667] Figures in a national study, from 1965 to 1966, revealed that 22 percent of the 23 year olds in the study had been arrested for a minor offense other than traffic violation, and arrest rates were higher for black men and for youths living in poor urban areas. *Bureau of Labor Statistics, US Department of Labor.* <http://www.bls.gov/nls/oldyoungmen.htm> ; Erica Goode, *Many in U.S. Are Arrested by Age 23, Study Finds*. *New York Times*. December 19, 2011. <http://www.nytimes.com/2011/12/19/us/nearly-a-third-of-americans-are-arrested-by-23-study-says.html>.

[668] Annual Report on the State Police.

[669] Annual Report on the State Police.

[670] Annual Report on the State Police.

Terry v. Ohio, New York v. Sibron and *Peters v. New York: the U.S. Supreme Court and Stop-and-Frisk (1968)*

It took four years before the U.S. Supreme Court finally agreed to hear cases that challenged the legal merits of stop-and–frisk. In 1968 defendants in *Terry v. Ohio* challenged the constitutionality of Ohio's police stop-and-frisk practices.[671] This case was accompanied by two lesser-known cases from New York, *New York v. Sibron* and *Peters v. New York,* which addressed the constitutional validity of New York's stop-and-frisk statute.[672]

The facts in *Terry* involved a white police detective, Martin McFadden, who observed two young Black men—John Terry and Richard Chilton—approach and speak to a white man, Carl Katz in front of a store in downtown Cleveland, Ohio. McFadden admitted in the lower court proceedings that he stopped and frisked the men only because of their race and Cleveland was a segregated city at the time. Among police, it was commonly held belief that white and Black people only met to plan or commit crimes. After frisking Terry and Chilton, detective McFadden recovered weapons from both men, which courts later used for their convictions. In the two New York cases, police detectives separately conducted stops-and-frisks of Nelson Sibron and John Francis Peters. In criminal court, prosecutors used the evidence that police recovered from Sibron and Peters to secure their convictions. Ultimately, as Dollree Mapp had done almost a decade earlier, Terry, Sibron and Peters appealed their convictions before the U.S. Supreme Court.

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[671] 392 US 40 (1968).

[672] See New York v. Sibron, 219 N.E.2d 196 (N.Y. 1966), rev'd, 392 U.S. 40 (1968); See People v. Peters, 254 N.Y.S.2d 10, 11 (County Ct. 1964), affd, 265 N.Y.S.2d 612 (App. Div. 1965), affd, 219 N.E.2d 595 (N.Y. 1966); affirmed, sub nom., Sibron v. New York, 392 U.S. 40 (1968).

In the *Terry* opinion, while making its determination, the Supreme Court foreclosed the issue of race. The NAACP filed an *Amicus* brief with the Court to make oral arguments on behalf of America's Black people. In the brief, it articulated Black people as "a usually voiceless majority . . . who are illegally stopped and frisked by police" and asserted that the police "basis of suspicion" and subsequent searches were "connected with the rioting which plagued the Nation's cities." The Court declined to hear NAACP oral arguments, precluding racial considerations, perhaps because it wanted the cases to be considered as police cases about search powers rather than as race cases.[673]

In *Sibron* and *Peters* the U.S. Supreme Court announced support for New York's stop-and-frisk statute. In an 8-to-1 decision, the Court ruled that stop-and-frisk was constitutional. It finally defined the conjoined terms stop-and-frisk. Accordingly, a "stop" was enough to activate Fourth Amendment concerns but not so much as to require "probable cause," the minimum requirement for traditional arrest. And a "frisk" was a search but not a "full-blown" search and therefore something less than "probable cause" would suffice.

Ultimately, the Court backtracked from its previous liberal approach of policing state law enforcement officers. Chief Justice Earl Warren's majority opinion deviated from its position that used objective standards to permit close judicial supervision of police conduct and shifted to one that allowed a subjective "reasonableness" test. The Court revealed that it could not "police the policemen on the beat" and thus warned:

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[673] John Q. Barrett, "Deciding the Stop and Frisk Cases: A Look Inside the Supreme Court's Conference," *Saint John's Law Review* 72, no. 3 (1998): 758; See generally, Dan M. Kahan and Tracey L. Meares, Foreword: "The Coming Crisis of Criminal Procedure," *Georgetown Law Journal* 86 (1998): 1153, 1156-58 (arguing that virtually all of the Warren Court's landmark criminal procedure decisions of the 1960's arose from contexts of institutionalized racism).

> The wholesale harassment by . . . the police community of which minority groups, particularly Negroes, frequently complain, will not be stopped by the exclusion of any evidence from any criminal trial.[674]

Consequently, the Court's ruling rendered ineffective the exclusionary rule that it had created in the *Mapp* case which prevented police from searching people on a hunch. No longer would citizen be protected from unreasonable searches by police. *Terry* and its two New York companion cases legitimized police stop and frisk tactics, once again allowing police to operate with legal impunity in their daily patrol practices in New York in and across the nation.

After the *Terry* decision, the *Mapp* doctrine offered citizens little recourse against unreasonable police searches and made them vulnerable to harsh sentences if they were convicted of certain crimes. For nearly five decades, New York's stop-and-frisk law has shielded police in court from claims of harassment and unreasonable searches. In addition enforcement of the law has always allowed police to put race above crime, legitimizing criminological notions of young Black and Latino people as hyper criminal. Black communities and activist have always claimed that these police stops and searches were racialized. In response to public protest in the 1960s, police bureaucrats developed UF 250 (stop-and-frisk) forms that required officers to note the basis for the civilian stop. These stop-and-frisk forms are still used today and served as the paper trail for contemporary racial profiling lawsuits.

In May of 2012 Judge Shira A. Scheindlin of the Federal District Court in Manhattan condemned NYPD's stop-and-frisk practices as a reflection of the city's "deeply troubling apathy towards New Yorkers' most fundamental constitutional rights."[675] In Spring 2013, judge Scheindlin began hearing testimony from victims of unreasonable stop and searchers, experts

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[674] *Terry v. Ohio*, 392 U.S. 1, 14–15.

[675] Floyd et. al v City of New York, 08 Civ. 1034, p. 54.

and police officials— during the nine-week bench trial.[676] Nearly a dozen New Yorkers—Black and Latino men and women, adult and teenagers alike—described their encounters with police, giving their own details of stop-and-frisk, most were full police searches, unreasonable, humiliating and witnesses felt they were racially biased. On August 12, 2013, Judge Scheindlin ruled that the NYPD Police instituted an "indirect form of racial profiling" based on the increased number of stops that occurred in minority communities.[677] In her decision, she distinguished it "indirect racial profiling" because she found that the police department had a policy that:

> direct[ed] its commanders and officers to focus their stop activity on "the right people" — the demographic groups that appear most often in a precinct's crime complaints. This policy led inevitably to impermissibly targeting blacks and Hispanics for stops and frisks at a higher rate than similarly situated whites.[678]

While acknowledging that police had engaged in unconstitutional activity, the court's decision did not completely strike down stop-and-frisk in New York.[679] Instead it issued an order of remedies (or reforms) to make NYPD stop-and-frisk practices comply with the U.S. Constitution and long standing legal precedent set by the U.S. Supreme Court. By her order, Scheindlin sought to lessen the racial impact of police encounters and the collateral consequences—unreasonable searches, unlawful arrests, criminal prosecution, convictions, and possible prison sentences—in communities of color.

Despite the indicting federal court's decision, stop-and-frisk remains a constitutionally valid police power. It is imperative that scholars, activists and advocates who challenge mass

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[676] I was present in the courtroom to study the case.
[677] Floyd, et al. v. City of New York, 02 Civ. 1034 (SAS) (Aug. 12, 2013) at 85.
[678] Floyd, 64.
[679] Floyd, et al. v. City of New York, 02 Civ. 1034 (SAS) (Aug. 12, 2013). Floyd v. City of New York, No. 08 Civ. 1034, 2013 WL 4046209 (S.D.N.Y. Aug. 12, 2013) ("Liability Opinion"); Floyd v. City of New York, No. 08 Civ. 1034, 2013 WL 4046217 (S.D.N.Y. Aug. 12, 2013) ("Remedies Opinion").

imprisonment not forget stop-and-frisk or overlook other pre-trial criminal procedure laws. Stop-and-frisk, as a criminal procedure law, is tightly woven into the fabric of the criminal justice system. Law enforcement officers, prosecutors, and criminal court judges routinely rely on stop-and-frisk law to adjudicate civilian encounters with police. Since *Mapp* to *Terry*, and from *Rivera* to *Floyd* stop-and-frisk has continued to drive the inner workings of the U.S. criminal justice matrix and must not be taken for granted.