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Tanks and Rubber Bullets vs. Pussy Hats and High-Fives: A Comparative Look at the 2014 Ferguson Uprising and the 2017 Women’s March on Washington

Abby Harrington

I. INTRODUCTION

A picture is worth a thousand words. Throughout the beginning of the twenty-first century, the prevalence of cell phones has increased the ability of many to snap a picture. These images are then distributed through social media platforms and shared across cities, states, and beyond. After the police shooting of Michael Brown in 2014, images from the protests were shared via social media sites in order to show the interactions between the police and protesters. These images included pictures of protesters with their hands up, many of whom were African American, covering their faces with bandanas to fight off tear gas while standing before police officers in riot gear near military grade tanks. Less than three years later, in what has been called the largest single day protest in United States history, pictures of the 2017 Women’s March on Washington were also shared across social media platforms and news sites. These images included pictures of mostly white women in pink hats, carrying colorful signs with clever messages, and high fiving police officers.

These images illustrate the vast differences between police and media reactions to protests by different demographic groups in the United States. Undoubtedly, there are inherent differences between these two protests. This paper aims to identify how structural racism impacts the response of the media and police departments when reacting to large scale protests and the disparate treatment of protesters by the state, police departments, politicians, and media.

II. A HISTORY OF PROTESTING

Protesting is integral to the fabric of the United States. The founding fathers of the United States included in the First Amendment of the United States Constitution the right to protest, in the same amendment that granted freedom of speech. It states that Congress shall not make any laws that would interfere with “the right of the people peaceably to assemble.”¹ Identifying this as the First Amendment in the Bill of Rights was likely due

1. U.S. CONST. amend. I.

the circumstances surrounding the establishment of the United States. The country was born from the American Revolution which was in itself a protest against the obtrusive overreach of the British Government.² The importance of free speech rights has been exalted by Americans regardless of their self-identification or membership of a diverse group.

Protesting has become a mainstay of the American experience; it crosses over class, gender, and racial guidelines, as students, religious groups, minorities, and workers have engaged in protests.³ Nearly all identities have engaged in political protest in some way.⁴ The 1960s and 1970s saw an influx of protests. Many of these protests in the United States were a result of the 1960s and 1970s, including the Civil Rights Movement. The Civil Rights Movement fought for the increased rights of African Americans in the United States.⁵ With an increase in protests, came an increase in the research on the make-up of the individuals engaging in protests.⁶ In analyzing the composition of these protests, some researchers looked first to the “protest orientation” or the nature of the protest, to include, “‘political radicalization’, ‘politicalized discontent’, and ‘potential for political violence’ as antecedents to the actual behavioral or participation dimensions.”⁷ However, these descriptions presuppose that the makeup of the members of a protest leads to increased violence or radicalization. These kinds of descriptions also overlook factors like structural racism in their analysis.

The legal system has addressed the rights of protestors in different ways under federal law. First, the rights of protestors have been distinguished when they interfere with safety concerns for the community.⁸ While the federal government cannot limit a speaker solely on the basis of their point of view, freedom of speech protected by the First Amendment does not allow individuals to speak “whenever and however and wherever they please.”⁹ In making this distinction, the Court has identified that while freedom of speech is incredibly important, this right to free speech is not without its limits. Some limits include an established time, place, and manner, allowing the government to put some restrictions on the type and manner of speech that protestors use to demonstrate their First Amendment rights. This aims to serve a government interest while protecting the rights of the people. The Court has held that, “the State may have a legitimate

2. Jesse Lemisch, *The American Revolution Seen from the Bottom Up*, in *TOWARDS A NEW PAST: DISSENTING ESSAYS IN AMERICAN HISTORY* 3–45, 24 (Barton J. Bernstein ed., 1968).

3. *See generally id.*

4. JEROME SKOLNICK, *THE POLITICS OF PROTEST* (New York: Ballantine, 1969), xxi, 7–11.

5. *Id.*

6. Larry Isaac, Elizabeth Mutran & Sheldon Stryker, *Political Protest Orientations Among Black and White Adults*, 45 *AM. SOC. REV.* 191, 191 (1980).

7. *Id.* at 192.

8. *See Wood v. Moss*, 134 S. Ct. 2056 (2014).

9. *United States v. Grace*, 461 U.S. 171, 177–178 (1983) (quoting *Adderley v. Florida*, 385 U.S. 39, 48 (1966)).

interest in prohibiting some picketing to protect public order. But these justifications for selective exclusions from a public forum must be carefully scrutinized.”¹⁰ As such, the government is able to limit the time, place, or way in which First Amendment freedoms are demonstrated so long as there is a government interest.

The Court sometimes misses that inherent in these decisions about time, place, and manner restrictions is institutional and structural bias rooted in a legacy of racism in the United States. Essential in the determination of what is appropriate for a time or place is a value judgment about the legitimacy of the speech that is being regulated. For instance, empirical evidence suggests an emergence of unequal application of free speech rights when applied to pro-life and pro-choice protestors.¹¹ Both the speech and speaker has led to an unequal regulation of speech depending on the viewpoint addressed in the speech. This is not unique to the abortion protest debate, as it also played a role in the court’s view of the anti-war protests in response to Vietnam.¹² While the diversity and ideology of the court can lead to different outcomes, these decisions have arguably lead to more oversight over the actions of individuals and law enforcement agencies.

With an increase in protests came an increase in policing. Research on the 1960s and 1970s protests in the United States looked to the way police and the legal system addressed the supposed threats of each protest.¹³ Through their analysis, researchers began to notice the effects of over policing, specifically in communities of color.¹⁴ In these communities, increasing the number and reach of law enforcement harms community members by using policing strategies in ways that lead to “disproportionate experiences with surveillance and stops, disrespectful treatment, excessive force, police deliverance and fewer police protections.”¹⁵ It is well documented that these negative experiences with the police are far more prevalent in poor, urban neighborhoods than are in upper-class communities.¹⁶

Much of the justification for these increased interactions between police and community members derives from the belief that there is an increased need for police presence in order to address problems like drugs and gang violence, specifically in urban communities.¹⁷ This, in turn, leads

10. *Police Dep’t of Chi. v. Mosley*, 408 U.S. 92, 98-99 (1972).

11. Christopher P. Keleher, *Double Standards: The Suppression of Abortion Protester’s Free Speech Rights*, 51 DEPAUL L. REV. 825 (2002).

12. Keleher, *supra* note 11, at 894-95.

13. Jennifer Earl, Sarah A. Soule & John D. McCarthy, *Protest under Fire? Explaining the Policing of Protest*, 68 AM. SOC. REV. 581, 581, 583 (2003).

14. Rod K. Brunson, Jody Miller *Gender, Race, and Urban Policing: The Experience of African American Youths*, 20 GENDER AND SOC’Y 531, 531 (2006).

15. *Id.* at 531.

16. *Id.* at 532, 534.

17. Jeffrey A. Fagan, Amanda Geller, Garth Davies & Valerie West, *Street Stops and Broken Windows Revisited*, in RACE, ETHNICITY AND POLICING: NEW AND ESSENTIAL

to more police misconduct and further breaks down relationships between the police and the community they are supposed to protect.¹⁸ Many of these polices can be tracked to the broken windows theory of policing which charged law enforcement with addressing outward signs of disorder within a community.¹⁹ This type of policing lead to an increase of the number of stops by the police ranging from specifically minor offenses like possessing marijuana, graffiti, or consumption of alcohol in public, to stopping and searching individuals who could be potential criminals through “stop and frisk” tactics.²⁰ These decisions were discretionary by the police officers, and the use of force or decision to search an individual did not necessarily lead to arrests.²¹ It did, however, lead to breakdowns in trust between the police and the communities they work in.²²

The theories of over-policing include the “escalated force” doctrine, which appeared as standard operating procedure for many police departments across the country.²³ Scholars have described one specific practice, “police rioting,” where the police further instigate a riot through their response to public protest.²⁴ This happens when police officers utilize riot gear and other militarized equipment present during protests.²⁵ The use of militarized weapons has been described as a type of social control by the police.²⁶ The use of riot gear or military equipment is not a constant practice by the police to all protests. The police react to different protests using varying tactics based on a number of factors.²⁷

These differing reactions by the police have been framed in different ways by academics, but sociologists describe the theories in the following ways: (1) The threat approach, (2) the weakness approach, and the (3) police agency approach.²⁸ While these factors differ in form, it is likely that all of these factors are in place when police determine whether or not to engage in repressive tactics in response to protestors. These classifications aim to determine which protests are more susceptible to police oppression and violent reactions and to identify why the police respond the way they do.²⁹ First, the threat approach claims that some protests that threaten the status quo will lead to a higher likelihood of repression.³⁰ This is because the police will choose to repress these

READINGS 309–348 (Stephen K. Rice & Michael D. White 2010).

18. *Id.*

19. Fagan, Geller, Davies & West, *supra* note 17.

20. *Id.*

21. Brunson, *supra* note 14 at 534.

22. *Id.* at 533.

23. *See generally* Earl, Soule & McCarthy, *supra* note 13.

24. *Id.* at 590.

25. *Id.*

26. *Id.* at 582.

27. *Id.*

28. Earl, Soule & McCarthy, *supra* note 13 at 583, 585.

29. *Id.* at 583.

30. *Id.*

protests for fear that they will pose a threat to the political elite, or those in power.³¹ This can also apply to protests that the police feel are more radical in their goals, which are more likely to be repressed as compared to moderate protests.³²

Conversely, the weakness approach claims that the police will only repress movements that they believe they can stop or control.³³ The state will not attempt to stifle protests that they do not believe they can successfully repress, for fear that they will be embarrassed or ridiculed by the public for their inability to quell the protest.³⁴ This is also applied to the strength in which the protest itself is able to sustain the actions of the police.³⁵ Weak groups are unable to mobilize and react to the repression tactics put forth by the police, while strong groups are able to utilize access to public support or the media, political power, or access to the legal system.³⁶

Finally, the "Police Agency" approach holds that the likelihood of whether the police will seek to suppress protest is dependent on the internal workings of the specific agency.³⁷ This varies depending on the resources the department has and their history of repressing protests.³⁸ For instance, departments that have access to more resources will use those resources in an attempt to repress the social movement.

While there are examples of the use of force by law enforcement across decades, it was the emergence of the use of force by police as a first line of defense that defines the current era of policing.³⁹ While there have been programs that aimed to improve community policing, these programs are often cut when budget constraints exist.⁴⁰ Given the incentive to raise profits, places like Ferguson, Missouri used policing in order to obtain funds from things like traffic violations and seizures of personal property.⁴¹ Communities of color and the poor are more regularly subject to policing.⁴² It is therefore no surprise that the relationships between these communities and the police force are not altogether positive.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* at 584.

36. *Id.*

37. *Id.* at 585.

38. Earl, Soule & McCarthy, *supra* note 13, at 585.

39. BARRY FRIEDMAN, UNWARRANTED: POLICING WITHOUT PERMISSION (2017) at 8.

40. *Id.* at 17–18.

41. *Id.* at 11–12.

42. *Id.* at 12–13.

III. THE MILITARIZATION OF THE POLICE

One way in which policing has changed since the 1960s and 1970s is the militarization of the police.⁴³ During the 21st century, the line between policing and militarization, or law enforcement and war, has blurred.⁴⁴ One example of this is the relationship between the U.S. Military and U.S. Civilian Police through transfers of technology, weapons, training, and information sharing.⁴⁵ There are apparent commonalities between the two entities, including culture, language and style, organizational systems, the use of SWAT teams and command centers, and material similarities in weapons and advanced technology.⁴⁶

In 2014, the *New York Times* published a story claiming that between 2009 and 2015 the Pentagon had “transferred to police departments tens of thousands of machine guns; nearly 200,000 ammunition magazines; thousands of pieces of camouflage and night-vision equipment; and hundreds of silencers, armored cars and aircrafts.”⁴⁷ The program that dispersed these weapons was created when police departments wanted additional weapons to fight drug and gang violence.⁴⁸ While it is undisputed that police departments pursue the best weapons in order to protect their officers, the increase in the number of militarized weapons blurred the line between the police and the military. With the increase of access to heavily militarized tools, came an increase in the use of SWAT teams.⁴⁹ This addition of military weapons and procedures was also used as a tactic to recruit people to join the police force. Recruiting videos across the country included footage of SWAT teams entering houses with smoke bombs and firing off automatic rifles.⁵⁰ These videos show the changing role of the police in the United States. While the police are primarily seen as a group charged with ensuring the safety of a community through law enforcement, police officers also see themselves as fighters, warriors, and analogous to soldiers in the military. One of the big problems with this framework is that the police are most commonly reacting to people and scenarios inside their own communities. This othering, and the justification of using weapons that have been primarily used during the so called, and ongoing, “War on Terror” on United States residents continues to break down the trust of many communities while they interact with the police. It demonstrates a lack of trust and further builds animosity that sits

43. See generally, Peter B. Kraska, *Militarization and Policing—Its Relevance to 21st Century Police*, 1 POLICING: A JOURNAL OF POL’Y AND PRAC. 501 (2007).

44. *Id.*

45. *Id.* at 502.

46. Kraska, *supra* note 43 at 503.

47. Matt Apuzzo, *What Military Gear Your Local Police Department Bought* N.Y. TIMES (June 8, 2014), <https://www.nytimes.com/2014/08/20/upshot/data-on-transfer-of-military-gear-to-police-departments.html> [<https://perma.cc/9RH2-GVN6>].

48. *Id.*

49. *Id.*

50. *Id.*

atop the history of structural racism.

The biases against certain speech combined with the framework of the militarized police have led to unequal reactions to protests in the United States. Two such cases are the Ferguson Protests and the 2017 Women's March on Washington. This analysis will focus on the differences in the police and media reaction to these events.

Central to the debate is the fact that police departments argue that police officers must have discretion, rooted in a reasonable suspicion, in order to conduct investigations and enforce laws. This standard is inherently hard to define and depends on the background and training of the officer. Officers argue that the discretion to use force or utilize enhanced tactics, is essential in order to identify individuals who they believe are breaking the law.⁵¹ But this belief that they should have increased discretion to make individualized decisions ignores the layers of systematic racism that colors many of the interactions between the police and the communities they serve.

In the United States, studies have shown that young African American men are subject to additional policing and over policing as compared to other demographics.⁵² This is in part due to the belief by many that that a neighborhood predominately made up of African American men is perceived as a high crime neighborhood.⁵³ This perception of high crime neighborhoods is based in part by the legacy of segregation and racism in the United States, as well by negative stereotypes of minority groups.⁵⁴ While there has been a long history of violence by state actions against communities of color in the United States, the way young people of color are combatting this violence against members of their community is through social media.⁵⁵

In addition to race as a factor in police and civilian interactions, gender can also play a role in the way the police interact with individuals. Prior to 1983, it was believed that police were more likely to treat women in a "chivalrous manner" which would lead to more beneficial arrest decisions for women.⁵⁶ In a 1983 study, Christy Visher displayed that while "older, white, deferential women received more leniency than other women," African American women were more likely to be arrested than white men or women.⁵⁷ Through her analysis of police records, primarily in St. Louis,

51. See generally Ben Bowling, Alpa Parmar & Coretta Phillips, *Policing Minority Ethnic Communities*, in HANDBOOK OF POLICING 528–555 (Tim Newburn ed., 1st ed. 2003).

52. Lincoln Quillian & Devah Pager, *Black Neighbors, Higher Crime? The Role of Racial Stereotypes in Evaluations of Neighborhood Crime*, 107 AM. JOURNAL SOC. 717–767 (2001).

53. *Id.* at 718.

54. Quillian & Pager, *supra* note 52, at 720–21.

55. See generally Nikita Carney, *All Lives Matter, but so Does Race*, 40 HUMAN. & SOC'Y. 180–199 (2016).

56. Brunson & Miller, *supra* note 14, at 533.

57. *Id.* at 533–534.

she found that African American women were arrested at comparable rates to African American men.⁵⁸

IV. THE FERGUSON PROTESTS

In 2014, a number of protests broke out in Ferguson, Missouri, in response to the shooting of Michael Brown, an unarmed African American teenager, by a police officer employed by the Ferguson Police Department.⁵⁹ Brown was shot on August 9, 2014, around 12:00 p.m. He was a senior in high school when he was accused of robbing a convenience store and was subsequently shot and killed.

While there were varying reports by news organizations about the manner in which the protestors acted, there were many reports that described the groups as “peaceful.” This description was in turn used by the police department chief, Thomas Jackson: “we’re just asking that protests be peaceful. We understand the anger. We understand that people want answers. And we understand that we’ve got a problem.”⁶⁰ Jackson was also quoted saying that seven protestors were arrested the morning after the initial demonstrations, and that the police wanted the demonstrators to be able to protest, “but after peaceful protestors left, they were replaced by angry demonstrators ‘not so much interested in peaceful resolution.’”⁶¹

While the words used by the police chief asked for peace and seemingly supported the right to protest, the police wore riot gear and surrounded the protestors. The police presence included the use of armored vehicles with guns pointed into the crowd of protestors and helicopters flying above the demonstrations.⁶²

Similarly, the media responded to the protestors by describing their actions as “angry” as the “atmosphere changed.”⁶³ These descriptions explained the chanting of “Hands up. Don’t Shoot.” During this time, the police continued to circle the protestors, armed with large scale military equipment pointed towards the protestors.

While this particular shooting was unique to the community, it came after the police shooting of multiple people of color by police officers.

58. *Id.* at 534.

59. Theodore M. Shaw, *Introduction* to UNITED STATES DEP’T OF JUST., CIVIL RIGHTS DIV., THE FERGUSON REPORT: DEPARTMENT OF JUSTICE INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT vii, vii (2015).

60. David Schaper, *For A 4th Night, Ferguson Police Disperse Protesters*, NPR (Aug. 14, 2014, 5:02 AM), <https://www.npr.org/2014/08/14/340289245/for-a-4th-night-ferguson-police-disperse-protesters>[<https://perma.cc/Y5M2-P98M>].

61. Matt Pearce & David Zucchino, *Protesters and Police Face Off in St. Louis Suburb Over Shooting*, L.A. TIMES (Aug. 11, 2014, 10:19 PM), <https://www.latimes.com/nation/nationnow/la-na-missouri-st-louis-police-shooting-teen-20140811-story.html#page=1> [<https://perma.cc/SV4A-45Q9>].

62. Pearce & Zucchino, *supra* note 61.

63. *Id.*

Protests continued to emerge in the months after the initial protests in Ferguson. On October 14th, around 500 people took part in a protest outside a Ferguson Police station. It was reported that at least 50 people were arrested, including famous activist and protestor Cornel West.⁶⁴ These protests included predominantly peaceful actions like reading the names of individuals killed by police.

By August 20, 2014, at least 150 protestors were arrested.⁶⁵ While most of the arrests in the first few days of the protest were for burglary, there was a surge in arrests after August 16, 2014.⁶⁶ As many as 80% of the arrests after this date for “Refusal to Disperse.”⁶⁷

In 2014, Ferguson did not have a demonstration response plan in effect to address First Amendment Protests. At the time, they did not have any effective protocols in order to handle an event of this type and size.⁶⁸ Instead, the police department utilized a generic emergency response plan in response to the uprising after the death of Michael Brown. A 2015 report by the Department of Justice outlined how police enforcement, which included multiple enforcement agencies, mismanaged the response to the protests.⁶⁹ Specifically, the report for that actions by the enforcement agencies “infringed upon constitutionally-protected activities . . . (which) had the unintended consequence of escalating rather than diminishing tensions.”⁷⁰

Law enforcement in the area implemented “Code 1000” in response to the protests. Code 1000 is defined as “an administrative and operational mutual aid contingency plan” which is utilized when there is a crisis or emergency situation.⁷¹ When a Code 1000 is called, additional police cars within St. Louis are dispatched to the scene.⁷² Because of the lack of continuity between the many different police departments in the region, there was a break down in chains of command and in communication more generally.⁷³ In a Code 1000, the closest police officers are dispatched based on proximity at the time of the request, regardless of their expertise

64. Scott Neuman, *Police Arrest Dozens in Ferguson, Mo., Protests*, NPR (Oct 14, 2014, 7:07 AM), <https://www.npr.org/sections/thetwo-way/2014/10/14/356056012/police-arrest-dozens-in-ferguson-mo-protests> [<https://perma.cc/RH27-5GQU>].

65. Brian Fung, *As Ferguson Protests Continue, St. Louis County Reports a Huge Surge in Arrests*, WASH. POST (Aug. 20, 2014), https://www.washingtonpost.com/news/the-switch/wp/2014/08/20/as-ferguson-protests-continue-st-louis-county-reports-a-huge-surge-in-arrests/?utm_term=.62576a4cfa32 [<https://perma.cc/38MJ-968Q>].

66. *Id.*

67. *Id.*

68. U.S. DEP’T OF JUST. OFFICE OF COMTY. ORIENTED POLICING SERV, CRITICAL RESPONSE INITIATIVE, AFTER-ACTION ASSESSMENT OF THE POLICE RESPONSE TO THE AUGUST 2014 DEMONSTRATIONS IN FERGUSON, MISSOURI *passim* (2015).

69. *See generally id.*

70. *Id.* at xiv.

71. U.S. DEP’T OF JUST. OFFICE OF COMTY. ORIENTED POLICING SERV, *supra* note 68 at 32.

72. *Id.*

73. *Id.*

training or connection to the county.⁷⁴ Law enforcement officials who were dispatched to Ferguson were interviewed by the Department of Justice, and explained that it felt like there was no plan to respond to the protestors, and that they were “always playing catchup.”⁷⁵

The report found that the law enforcement agencies attempted to utilize The National Incident Management System (NIMS), but that it wasn't fully implemented due to a lack of communication both internally and with the public, and reactive steps by law enforcement.⁷⁶ This further escalated the conflict as it was not fully implemented.⁷⁷

In addition to the lack of organization, the police used less-lethal weapons in an attempt to disperse the crowds. The use of less-lethal weapons, such as chemical irritants and Stingerballs, PepperBalls, and Bean Bag rounds, were not tracked or documented by law enforcement, and were largely left to the discretion of the officers.⁷⁸ There were times where these methods, specifically tear gas, were used “without proper warnings, without sufficient attention paid to safe egress” preventing the protestors from taking protective actions.⁷⁹ The use of less-lethal weapons was hard to track because over fifty law enforcement agencies responded to the Code 1000 in Ferguson, and the documentation of their actions is not complete.⁸⁰ The DOJ's best guess of the amount of tear gas used was multiple times each evening the nights of August 10-13, and August 15-18 in an attempt to disperse the crowds, though many argued that it was used as a punishment towards the protestors.⁸¹ Law enforcement members who were interviewed were unsure if warning were given before each instance of tear gas.⁸² The use of the chemical irritants was done in an unorganized way, and because of the lack of documentation it is unclear if any protocol was followed before they were used against the protestors.

Because law enforcement did not have a specific plan in place to address protestors engaging in First Amendment protected activity, there was a lack of cohesion between the police officers. The law enforcement officials were not trained uniformly, and instead were following changing orders daily.⁸³ This meant that the police had authoritative discretion that was not based on any codified policies or procedures. In some cases, this included the use of force by officers, but this was not reported uniformly, and documentation was regularly incomplete when force was used.⁸⁴ One

74. *Id.*

75. *Id.* at 36.

76. *Id.* at xv.

77. *Id.*

78. *Id.*

79. *Id.* at xvi.

80. U.S. DEP'T OF JUST. OFFICE OF COMTY. ORIENTED POLICING SERV, *supra* note 68, at 46.

81. *Id.* at 49.

82. *Id.*

83. *Id.* at 38.

84. *Id.* at 42.

example of this force was the use of canines. While the use of police dogs is not typically categorized as force, many in Ferguson identified it as such, basing their analysis of the use of police dogs during civil rights marches in the 1960s.⁸⁵ The protestors perceived the use of canines as an attempt by law enforcement to frighten them, undermining the trust in the police even further; this escalated the conflict between protestors and law enforcement.⁸⁶

The lack of organization of the police department did more than exacerbate the conflict in the region. Their actions also lead to First Amendment violations that infringed on the rights of the protestors. In an attempt to disperse protestors, police officers employed a “keep moving” strategy. This strategy, also referred to as the “five-second rule,” was derived from a Missouri refusal to disperse statute that makes it a misdemeanor for an individual to fail to follow law enforcement’s command to leave the scene of an “unlawful assembly or . . . riot.”⁸⁷ This was used against all protestors, regardless of whether they were engaging in lawful or unlawful acts. The police could not arrest protestors for “failure to disperse” because they couldn’t force the peaceful protestors to disperse, and so they attempted to use the “keep moving” order to require protestors to keep moving rather than leave the scene.⁸⁸ This order was applied to all parties, including peaceful protestors, and law enforcement “told many people who were either peacefully assembling or simply standing on their own that they would be arrested if they did not keep moving.”⁸⁹ This practice was deemed a violation of the protestors First Amendment rights to assemble, and a federal court issued a preliminary injunction ordering law enforcement to “stop telling citizens that they must keep moving, or from threatening them with arrest if they stand still, so long as those citizens are not committing a crime, engaging in violent acts, or participating in a crowd that contains other people doing those things.”⁹⁰ This case further demonstrated the First Amendment violations by law enforcement, and displayed the lack of plan to protect the First Amendment rights of those who protested.

A. Traditional News Media Reaction

There was a varied response to Ferguson by the news media. Specifically, the biggest three cable news entities (Fox, MSNBC, CNN) gave varying amount of time to stories about the unrest in Ferguson and the death of Michael Brown. In the days after Michael Brown was shot, cable news picked up the story. Many network news channels were reporting the

85. *Id.* at 43.

86. *Id.*

87. MO. REV. STAT. § 574.060

88. U.S. DEP’T OF JUST. OFFICE OF COMMUNITY ORIENTED POLICING SERVICES CRITICAL RESPONSE INITIATIVE *supra* note 68 at 62.

89. *Id.* at 63.

90. *Abdullah v. Cty. of St. Louis, Mo.*, 52 F. Supp. 3d 936 (E.D. Mo. 2014).

story on Friday night, the day after the shooting, but it wasn't until the following Monday that all three big news networks were reporting on the story at varying levels.⁹¹ MSNBC devoted nearly six hours to coverage of Ferguson in the first week after the shooting, while CNN dedicated four hours, and Fox three hours.⁹² By the following week, all three news stations were spending basically equal time on the coverage.⁹³

In addition to cable news, newspapers sent their reporters down to Ferguson to report on what was repeatedly called “unrest.” The reports varied from descriptions of peaceful vigils to describing “looting” and “riots.”⁹⁴ On Monday, August 11, the media first reported police using rubber bullets in attempt to break up the crowd of protestors.⁹⁵

The language used by those speaking can influence the way a story is perceived. Specifically using emotionally charged words to describe settlements and scenarios can color the way individuals understand events. This was true throughout the reporting of the protests in Ferguson. Specifically, the media repeatedly used words with emotionally charged meanings like riots, as opposed to describing the events as protests. A riot is defined as, “public violence, tumult, or disorder” or “a violence public disorder, specifically: a tumultuous disturbance of the public peace by three or more persons assembled together and acting with a common interest.”⁹⁶ In addition to its meaning eliciting the image of violence and disorder, it also recalls images of riots that occur after sports teams lose (like the Detroit Riot after the Tigers won the World Series in 1984), or famously the Rodney King Riots that occurred in Los Angeles in 1991. Given the history of the term, riots tend to elicit images of cars being set on fire, people looting local businesses, and random acts of violence.

In using the term “riot” instead of words like “protest,” “demonstration,” “march” or other more neutral terms to describe what was happening in Ferguson, the media continued to control the narrative of a dangerous group of angry people rioting in the streets. This is not unusual in reporting about issues facing communities of color. Throughout history there have been many examples of rebellions or uprisings being lauded as brave or patriotic when they include a majority of white protestors. Historically, events like The American Revolution, Shay's Rebellion or Bacon's Rebellion have been celebrated as patriotic events and their

91. Paul Hitlin & Nancy Vogt., *Cable, Twitter Picked up Ferguson Story at a Similar Clip*, PEW RESEARCH CENTER (Aug. 20, 2014), <https://www.pewresearch.org/fact-tank/2014/08/20/cable-twitter-picked-up-ferguson-story-at-a-similar-clip/>[<https://perma.cc/ET39-HEK4>].

92. *Id.*

93. *Id.*

94. Jennifer Preston, *Aug. 14 Updates on Protests Over Police Shooting in Ferguson, Mo.* N.Y. TIMES (Aug. 14, 2014), <https://news.blogs.nytimes.com/2014/08/14/live-updates-on-police-shooting-in-ferguson-mo/>[<https://perma.cc/7LXR-BJXV>].

95. Hitlin & Vogt, *supra* note 91.

96. *Riot*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/riot> [<https://perma.cc/8JVJG-QLBEJ>] (last visited Oct. 12, 2019).

members have been seen as brave.⁹⁷ Of course these events included violence as the individuals rose up again their oppressor. More recently, the news media described an uprising at Penn State University, where more than 10,000 students flipped cars and damaged school property as a “rally” rather than a riot in response to the firing of a beloved football coach who faced allegations of covering up the sexual assault of a child.⁹⁸ These rioters were educated and largely white. This is not the case in recent years when uprisings made up primarily of people of color, as these events are typically referred to as riots. The media continued to classify the uprising as a riot and did so while ignoring the underlying problems the community faced that lead to the quick ignition of the large support for the protests in the city.

While the media did report on both the actions of the protestors and the actions of the police in Ferguson, they were hesitant to discuss the underlying problem of race relations between the police and the citizens. In the first ten days after the shooting of Michael Brown, media outlets produced nearly one thousand pieces on Ferguson.⁹⁹ According to a study of these pieces, “Terms such as “race,” “racial,” “racism,” “racist,” and “diversity” were explicitly mentioned in fewer than half of the stories in mainstream media coverage—46.3%.”¹⁰⁰ In addition, only 7% of the stories that explicitly discussed race in these terms, did so in the first few paragraphs of the piece.¹⁰¹ This amounts to ignoring the underlying structural racism that lead to the shooting of Michael Brown, and the reaction by the people of Ferguson. It further demonstrates the difference in understanding and framing of the issues surrounding police and people of color. In a national survey discussing the issues central to the Ferguson unrest, 80% of black respondents expressed that, “this case raises important issues about race that need to be discussed.”¹⁰² This was compared to 37% of white respondents.¹⁰³ In addition, 47% of white respondents reported that, “race is getting more attention than it deserves.”¹⁰⁴ This juxtaposition of the feelings by different racial groups to the amount of coverage about Ferguson that relied on race demonstrates that fundamental breakdown in the understanding of what the protestors in Ferguson were fighting for. Given the findings of the Ferguson report that detailed countless violations

97. Karen Grigsby Bates, *Is It An ‘Uprising’ Or A ‘Riot’? Depends on Who’s Watching*, NPR (Apr. 30, 2015, 3:37 PM), <https://www.npr.org/sections/codeswitch/2015/04/30/403303769/uprising-or-riot-depends-whos-watching> [<https://perma.cc/9B2U-XRF5>].

98. *Id.*

99. *Moving the Race Conversation Forward: #MediaOnFerguson Race Forward*, RACE FORWARD: THE CENTER FOR RACIAL JUSTICE INNOVATION (Sept. 2014), https://act.colorlines.com/acton/attachment/1069/f-012e/1/-/-/-/Moving_Race_Conversation_Forward_Ferguson.pdf [hereinafter *Race Forward*]

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

of constitutional rights, specifically in the actions and standard operating practices of the police, it is clear that the narrative surrounding the demonstrations in Ferguson left out a huge contributing factor to the mobilization of people who came to protest the shooting of Michael Brown. They ignored the legacy of racism, and made it seem like an isolated event as opposed to an event rooted in decades of racial violence in the community.

Perhaps not surprising, the media soon picked up, and focused much reporting on, a story of two journalists being arrested by Ferguson Police. On August 13, Ryan Reilly of *Huffington Post*, and Wesley Lowery of the *Washington Post* were arrested in a McDonalds days after the shooting.¹⁰⁵ According to their reports they were inside the McDonalds used by many reporters to work on stories when two police officers came inside and were ordered to leave. When they didn't comply, the police officers handcuffed them and slammed their heads against a soda machine and glass door respectively.¹⁰⁶ This story continued to be broadcasted by news outlets and mentioned by politicians as they talked about the violence in Ferguson. There were later accounts that other journalists were also arrested by police, and subject to other violence including being shot by rubber bullets by officers.¹⁰⁷

The news media's willingness to focus a story on the violence against reporters sheds some light on the priorities and biases of the news media. While it is obvious that the reporters would want to protect individuals in their line of work, this also highlights that violence against outsiders reporting on the story was sometimes seen as paramount to the stories of the individuals, all of whom were members of the Ferguson community that had been shot with rubber bullets and pepper spray launched by the police. This was framed as an assault on the First Amendment of the Constitution, not because the rights of the protesters were being stifled, but because the right of the press to report on these issues was quieted. Since then, the charges against the reporters have been dropped, and a group of reporters who sued alleging violations of their First Amendment rights as members of the press, have settled with the St. Louis County for \$8,500.¹⁰⁸

This framing calls into question what is valued by judicial and media actors. The story here should have been the police reaction to the community of Ferguson protesting the death of a black man by police

105. Peter Sterne, *St. Louis Drops Charges Against Journalists Arrested in Ferguson*, POLITICO MEDIA, May 19, 2016, 05:20 PM, <https://www.politico.com/media/story/2016/05/st-louis-drops-charges-against-journalists-arrested-in-ferguson-004534> [<https://perma.cc/PZE2-HU6J>].

106. *Id.*

107. *Id.*

108. Michael Calderone, *Trey Yingst, Journalist Arrested in Ferguson, Wins Settlement from St. Louis County*, HUFFINGTON POST (Aug. 3, 2014), https://www.huffingtonpost.com/entry/trey-yingst-journalist-arrested-in-ferguson-wins-settlement-from-st-louis-county_us_55b7f4bfe4b0224d88345c7d [<https://perma.cc/2LAM-ET85>].

officers, in a city with numerous constitutional violations in the standard operating of police officers. Instead, much news attention was given to the violent acts of the protestors and the story of outside reporters who were swept up in the violent action of the police.

B. Social Media Reaction

While social media is not always a reliable source of information from all people, social media platforms like Twitter can be a way to better understand how some people think about social issues including race.¹⁰⁹ Many factors play a role into what people choose to post, including their personal experiences and the place they get their information from. It is important to note, however, that social media has been the first place to report stories prior to the news media. This is for a number of reasons including that individuals using Twitter are able to report on issues without the norms followed by media resources. For instance, social media users are not required by social norms or law to have multiple sources before posting.

For example, in response to the death of Michael Brown, Twitter broke the story before the cable news networks reported what was happening in the Ferguson.¹¹⁰ While the first round of tweets were primarily from activists, Twitter was also used by the reporters on the ground who wanted to quickly communicate information about the actions of the police and the protesters. This commentary occurred in both the form of pictures, quotes from protestors, and descriptions of the people and places during the unrest.

Furthermore, the Black Lives Matter movement came into the national spotlight in response to the Ferguson protests.¹¹¹ The Black Lives Matter movement began in 2012 after George Zimmerman, who shot and killed Trayvon Martin, a seventeen-year-old black boy in Florida, was acquitted.¹¹² The movement started on social media with the hashtag #BlackLivesMatter.¹¹³ The hashtag, and the movement, were brought to national prominence after the death of Michael Brown in Ferguson.¹¹⁴ This hashtag lead to the use of #AllLivesMatter in response, with the intent to diminish and deny the repeated events of police violence against young black men and women.¹¹⁵ This rejection of the disproportionate acts of violence by the police against communities of color highlight how structural racism is imbedded in white voices.¹¹⁶

109. Irfan Chaudhry, *Not So Black and White*, 16 CULTURAL STUDIES ↔ CRITICAL METHODOLOGIES 296–304 (2016).

110. Hitlin & Vogt, *supra* note 91.

111. Nikita Carney, *All Lives Matter, but so Does Race*, 40 HUMANITY & SOCIETY 180–199 (2016).

112. *Id.* at 181.

113. *Id.* at 182.

114. *Id.*

115. *Id.* at 190.

116. *Id.* at 194.

C. Politicians' Reactions

On August 12, President Obama released a statement on the death of Michael Brown. In that statement he offered his condolences and stated that the Department of Justice was investigating the shooting alongside the local authorities. He also offered the following advice, "I urge everyone in Ferguson, Missouri, and across the country, to remember this young man through reflection and understanding. We should comfort each other and talk with one another in a way that heals, not in a way that wounds."¹¹⁷ Given mounting pressure from many sides, the President held a briefing in which he reaffirmed what he had included in his statement, but also spoke to the violence that had been occurring in the streets of Ferguson.¹¹⁸ He specifically stated the conflicting rights of the police and the protestors, stating that:

We are united in common values, and that includes belief in equality under the law, basic respect for public order and the right to peaceful public protest, a reverence for the dignity of every single man, woman and child among us, and the need for accountability when it comes to our government.¹¹⁹

Obama further asserted in his press conference that he was looking to the leadership of Jay Nixon, the governor of Missouri.

On August 14th, Governor Nixon called in the Missouri State Highway Patrol to take control of the security operations. The Missouri State Highway Patrol was led by Captain Ronald S. Johnson, an African American man who grew up close to Ferguson.¹²⁰ As a result of this change in leadership on the ground many of the heavily militarized vehicles including SWAT trucks were removed from the streets.¹²¹

Governor Jay Nixon was quoted saying, "People have the right to express their views and grievances, but they do not have the right to place their fellow citizens and property at risk"¹²² To address these "risks," he

117. President Obama, *Statement by the President on the Passing of Michael Brown* (Aug. 12, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/08/12/state-statement-president-passing-michael-brown> [hereinafter *Statement*].

118. President Obama, Press Conference in Edgartown, Mass. (Aug. 14, 2014) <https://obamawhitehouse.archives.gov/the-press-office/2014/08/14/statement-president> [hereinafter *Press Conference*].

119. *Id.*

120. Wesley Lowery, Jerry Markon & Mark Berman, *Federal, State Officials Take Sweeping Steps in Response to Ferguson, Mo., Unrest*, WASH. POST (2014), https://www.washingtonpost.com/politics/federal-state-officials-take-sweeping-steps-in-response-to-ferguson-mo-unrest/2014/08/14/7e9c6de0-23f8-11e4-86ca-6f03cbd15c1a_story.html?noredirect=on&utm_term=.da568c7b1d96 [<https://perma.cc/6XE4-2PTC>].

121. *Id.*

122. Nadine El-Enany, *Ferguson and the Politics of Policing Radical Protest*, 26 LAW AND CRITIQUE 3–6 (2015).

called in the National Guard on August 19, 2014.¹²³ It is important to note that the National Guard is a branch of the United States Armed Forces. This decision to call in additional troops to suppress the demonstrations is an example of a further militarization against the people in Ferguson. Here, not only did protesters need to be controlled but it had to be done by the United States Military Force.

But not all politicians felt that that the use of the military grade equipment was the best way to address the ongoing uprising. The Attorney General at the time, Eric Holder, expressed concern about the police reaction, “At a time when we must seek to rebuild trust between law enforcement and the local community, I am deeply concerned that the deployment of military equipment and vehicles sends a conflicting message.”¹²⁴ These sentiments were shared by Missouri Senator Claire McCaskill in an interview with NPR on August 16th where she said, “What we saw the other night was a militarization that was escalating the problem rather than helping with the solution of the problem.”¹²⁵ She went on to state that much of the militarized vehicles had been since removed from the streets.¹²⁶

In response to the shooting of Michael Brown and the actions of the protestors in the days and months after his death, the Department of Justice opened up an investigation.¹²⁷ The report, which was released in March 2015, concluded there was a history and pattern of racial bias in Ferguson by the Police Department.¹²⁸ It found that while 67% of people living in Ferguson were black, African Americans made up 88% of uses of force documented by the police, 85% of traffic stops, 90% of citations, and 93% of arrests.¹²⁹ In addition, the report uncovered racist jokes sent between officers during working hours, including a joke about President Barack Obama’s likelihood of success stating, “what black man holds a steady job for four years.”¹³⁰ This report validated many of the concerns that African Americans had voiced through their protests, and provided a basis for the disconnect between law enforcement and the citizens of Ferguson.

123. *Id.* at 5.

124. Julie Bosman & Matt Apuzzo, *In Wake of Clashes, Calls to Demilitarize Police*, N.Y. TIMES (2014) <https://www.nytimes.com/2014/08/15/us/ferguson-missouri-in-wake-of-clashes-calls-to-demilitarize-police.html?module=inline> [<https://perma.cc/LQ7R-5SDE>].

125. *Sen. McCaskill On Ferguson: ‘We’re Going to Get All The Facts’*, NPR (2014), <https://www.npr.org/2014/08/16/340947095/sen-mccaskill-on-ferguson-were-going-to-get-all-the-facts> [<https://perma.cc/J6TF-RRBM>].

126. *Id.*

127. German Lopez, *What did the Justice Department’s investigation into the Ferguson Police Department find?*, VOX (2016), <https://www.vox.com/2015/5/31/17937860/justice-department-ferguson-police-michael-brown-shooting> [<https://perma.cc/8H4Y-J8TH>].

128. *Id.*

129. *Id.*

130. *Id.*

V. THE WOMEN'S MARCH ON WASHINGTON

The Women's March on Washington occurred on January 21, 2017. It was held the day after the inauguration of Donald Trump as the forty-fifth president of the United States. While sources vary, it has been reported that 3.2 million people participated in the march in over 300 cities across the country.¹³¹ The main location of the rally was in Washington, D.C. where there were approximately 485,000 protestors moving from the Capitol building to the White House.¹³² In D.C., the rally included speeches and performances by famous actors, musicians, and activists. People walked with signs and with pink "pussy hats," a symbol of their reaction to Donald Trump's comments about women on an Access Hollywood tape that was released about a month before the 2016 presidential election.¹³³

The overarching purpose of the march was to protest against the perceived threats to women by the Trump Administration. Among these issues were reproductive rights, LGBTQIA rights, criminal justice reform, immigrants' rights, environmental rights, and many others.¹³⁴

The March was fueled by social media.¹³⁵ In the days after the election of Donald Trump, and the defeat of Hillary Clinton, the first female nominee for president from a major political party, many took to social media to express their unhappiness with the election results. The idea for the protest was a combination of some of these efforts. It started when Teresa Shook, a woman living in Hawaii, created a Facebook event the night after the election calling for a protest of Donald Trump, the newly elected president.¹³⁶ When she went to sleep the night of the election she had 40 responses to her event.¹³⁷ By the following day, the event had over ten thousand RSVPs.¹³⁸ Across the country in New York, Bob Bland, a

131. Tess Owen, *The Women's March Turnout is at 3.2 Million and Counting*, VICE NEWS (2017) https://news.vice.com/en_ca/article/a3jbpp/womens-march-turnout-is-at-3-2-million-and-counting [<https://perma.cc/MH6T-8HMW>].

132. *Id.*

133. A month before the 2016 Presidential election, the *Washington Post* ran a story including a tape of then presidential candidate Donald Trump having a lewd conversation about women. The tape included Trump saying, "And when you're a star, they let you do it ... You can do anything ... grab them by the pussy. You can do anything." David A. Fahrenthold, *Trump recorded having extremely lewd conversation about women in 2005*, WASH. POST (2016), https://www.washingtonpost.com/politics/trump-recorded-having-extremely-lewd-conversation-about-women-in-2005/2016/10/07/3b9ce776-8cb4-11e6-bf8a-3d26847eed4_story.html?noredirect=on&utm_term=.8a3c437d9e0f [<https://perma.cc/T4P3-2BQQ>].

134. *Women's March*, HISTORY, <https://www.history.com/this-day-in-history/womens-march>.

135. Jia Tolentino, *The Somehow Controversial Women's March on Washington*, NEW YORKER (2017), <https://www.newyorker.com/culture/jia-tolentino/the-somehow-controversial-womens-march-on-washington> (last visited Mar. 31, 2019).

136. *Id.*

137. Tolentino, *supra* note 135.

138. *Id.*

fashion designer who had been creating political shirts throughout the election, also suggested a rally via social media.¹³⁹ The two women, Shook and Bland, combined forces to make one event, and many others stepped up to volunteer to organize the event.¹⁴⁰ It was named the Women's March on Washington (March) and was set for the day after President Donald Trump's inauguration.¹⁴¹

The event received some backlash early on for the lack of diversity within the organizers.¹⁴² In a Facebook post, Bland wrote about acknowledging the need for a diverse set of voices in the decision making and planning process for the March.¹⁴³ In that post, attributed to the co-chairs of the Women's March, they discussed that bringing on diverse voices and experiences was the first step, "These women are not tokens; they are dynamic and powerful leaders who have been organizing intersectional mobilizations for their entire careers. Together with the original team, they brought on an incredible group of women to set the agenda and handle the coordination of the WMW"¹⁴⁴

This statement immediately polarized many of the supporters of the Women's March on Washington.¹⁴⁵ Some white women responded claiming that all women were "2nd class citizens" and that race should not be a factor in the planning and organization while others compared the statement to the same identity politics used by Trump.¹⁴⁶ Others questioned whether these steps did enough to actually diversify the voices in the movement.¹⁴⁷ The organizers put out together a three page statement of the "Guiding Vision and Definition of Principles" that included many intersectional goals, including the connection between gender justice and racial justice, the need to reform the criminal justice system, the need to address the problem of the targeting of people of color by police, and the inequity in pay that is only exacerbated for women of color.¹⁴⁸ Despite the steps taken by the organizers, many still felt that the march was primarily an exercise in white feminism, as it ignored the voices of women of color.¹⁴⁹

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. Tolentino, *supra* note 135.

148. *Women's March on Washington Guiding Vision and Definition of Principles*, RADICAL DEMOCRACY PROJECT, <https://ia801607.us.archive.org/4/items/WMWGuidingVisionDefinitionofPrinciples/WMW%2BGuiding%2B%26%2BDefinition%2B%2BPrinciples.pdf> [<https://perma.cc/3P9B-V3LE>].

149. Lavanya Ramanathan, *Was the Women's March just Another Display of White Privilege? Some Think so*, WASH. POST (2017), https://www.washingtonpost.com/lifestyle/style/was-the-womens-march-just-another-display-of-white-privilege-some-think-so/2017/01/24/00bbdcca-e1a0-11e6-a547-5fb9411d332c_story.html?utm_term=.512b384de93c [<https://perma.cc/YL74-AA2G>]

A. Media and Social Media Reaction

The media largely ignored the Women's March on Washington in the initial organizing days.¹⁵⁰ The *New York Times* wrote several stories, but only featured one on the front page preceding the March that focused on the divisions in the organizers and their disagreements about how race should play into the march.¹⁵¹ This was the same tactic as the Washington Post that only featured one story about the March on their front page.¹⁵² On the day of the actual March, however, news stations covered the protest all day, commenting on the scale of the protest, and repeatedly calling it "overwhelming."¹⁵³

As part of the rally, many of the speeches by prominent women were televised by major news stations.¹⁵⁴ Among these included a speech from Madonna. In her speech she stated, "Yes, I'm angry. Yes, I am outraged. Yes, I have thought an awful lot about blowing up the White House. But I know that this won't change anything."¹⁵⁵ Other than some conservative media outlets vilifying the artist for her statements, there was no public reaction from law enforcement.¹⁵⁶ Some questioned why there was no reaction to Madonna's statements about violence when men and women of color would be fearful of even expressing those statements in private places.¹⁵⁷

Other stories published by online media sources talked about the logistics of the march, describing and including pictures of planes and buses of mostly white women.¹⁵⁸ They aimed to juxtapose the size of the march to Donald Trump's inauguration the previous day, explaining that while four hundred buses had applied for parking permits for inauguration day, more than 1,200 parking permits had been requested by buses for the following day.¹⁵⁹

In the days after the march, the media repeatedly showed images of the

150. Paul Farhi, *How Mainstream Media Missed the March that Social Media Turned into a Phenomenon*, WASH. POST (2017), https://www.washingtonpost.com/lifestyle/style/how-mass-media-missed-the-march-that-social-media-turned-into-a-phenomenon/2017/01/21/2db4742c-e005-11e6-918c-99ede3c8cafa_story.html?noredirect=on&utm_term=.4c1c2d811782 [https://perma.cc/49ZA-S9AA].

151. *Id.*

152. *Id.*

153. *Id.*

154. Christie D'Zurilla, *Madonna Clarifies 'Blowing up the White House' Comment: 'Taken Wildly out of Context.'* L.A. TIMES (2017), <https://www.latimes.com/entertainment/gossip/la-et-mg-madonna-womens-march-secret-service-20170123-htmlstory.html> [https://perma.cc/8U83-CM9C].

155. *Id.*

156. *Id.*

157. Ramanathan, *supra* note 149.

158. German Lopez, *Airplanes Full of Women are Flying into Washington, DC, to Protest President Trump*, VOX (2017), <https://www.vox.com/identities/2017/1/20/14341702/womens-march-airplanes-trump> [https://perma.cc/3EAN-QVL9].

159. *Id.*

protestors, focusing on the beauty of the protest signs, the clever buttons, and pussy hats.¹⁶⁰ Web articles entitled, “45 of the Most Brilliant, Creative, and Savage Protest Signs From the Women’s March on Washington”¹⁶¹ and “The Best, Nastiest Protest Signs From the Women’s March on Washington,”¹⁶² showed the excitement surrounding the protestors and their creativity.

One theme of many articles was the “peaceful nature” of the Women’s March. Articles discussed the comradery shared by the marchers.¹⁶³ In these articles, the police were celebrated for not making any arrests as large groups of people entered the capitol mall.¹⁶⁴ Law enforcement was also celebrated for their support of the marchers, as articles detailed police officers giving marchers directions or high fives.¹⁶⁵ One article wrote that in addition to lauding the women for their peaceful nature, “police deserve a lot of credit, too. Not only in D.C., where law enforcement has a lot of experience with public protest, but in all the cities and towns with sizable sister marches that aren’t often given over to mass demonstrations.”¹⁶⁶

Some articles discussed these interactions between the police and the marches as positive. One article wrote that the marchers “expressed their gratitude for the police presence, thanking officers individually, cheering them on as their squad cars go by, and even singing “Happy Birthday” to one.”¹⁶⁷ Pictures of police wearing the pink pussy hats and posing with protestors were prevalent in both social media posts and articles about the march.¹⁶⁸ One such picture showed a member of the national guard taking a picture for a protestor while standing on the top of his truck as protestors leaned against the vehicle.¹⁶⁹

Many of the images and stories about the women’s march were in fact supplemented by pictures from Facebook, Instagram, and Twitter.¹⁷⁰

160. Forrest Wickman, *The Best, Nastiest Protest Signs From the Women’s March on Washington*, WASH. SLATE MAGAZINE (2017), <https://slate.com/human-interest/2017/01/the-best-protest-signs-from-the-womens-march-on-washington.html> [https://perma.cc/Q4WB-G32A].

161. Perrie Samotin, *45 of the Most Brilliant, Creative, and Savage Protest Signs From the Women’s March*, GLAMOUR (2018), <https://www.glamour.com/gallery/best-protest-signs-from-women-march-on-washington> [https://perma.cc/GJ8E-PXKB] (last visited Apr. 3, 2019).

162. Wickman, *supra* note 160.

163. Kriston Capps, *Millions of Marchers, Zero Arrests*, CITYLAB (2018), <https://www.citylab.com/equity/2018/01/no-arrests-at-womens-march-in-dc-los-angeles-new-york-chicago-austin-seattle/514067> [https://perma.cc/7LXQ-9EMJ] (last visited Apr. 8, 2019).

164. *Id.*

165. *Id.*

166. *Id.*

167. Rachel Sadon, *D.C. Police Made No Arrests at The Women’s March On Washington*, DCIST (2018), http://dcist.com/2018/01/womens_marchers_police.php [https://perma.cc/D3XQ-HJYZ] (last visited Apr. 8, 2019).

168. *Id.*

169. Sadon, *supra* note 167.

170. Wickman, *supra* note 160.

Reporters and marchers alike posted pictures of women marching, traveling via trains, buses and planes.¹⁷¹ The March was celebrated as an example of how organizing on social media could lead a movement to success, and social media platforms were extolled as a main factor that allowed the protest to grow and include so many varying views.¹⁷²

In the aftermath of the Women's March in 2017, social media has allowed women to take part in a number of movements. The most notable of these have been the #MeToo and #TimesUp movements which both have uncovered systematic sexual assault in a number of industries.¹⁷³ While these have not been unilaterally accepted via social media, they have led to a number of high-level firings in a number of industries.

B. Police Reaction

The Metropolitan Police Department of Washington, DC has standard operating procedures in order to effectively respond to First Amendment protests and assemblies. These procedures are described as the, "national model for protecting the First Amendment rights and safety of demonstrators, while safeguarding persons and property in the District of Columbia."¹⁷⁴ In addition to these principles, the Department's procedures comply with the First Amendment Rights and Police Standards Act of 2004.¹⁷⁵ The act, which is a DC law passed in 2004, outlines the policies of the District of Columbia with regards to First Amendment protests on the streets and parks in Washington, D.C. The act states that the police of the District of Columbia will work to address the individuals engaging in unlawful disorderly conduct but will not issue a "general order to disperse, thus allowing the First Amendment assembly to continue."¹⁷⁶ It goes on to include that the police will not issue a general order to disperse unless the protestors are not following the time, place, and manner restrictions, or if the majority of the protestors are engaging in violence or disorderly conduct.¹⁷⁷ Finally, the act states that if the Mayor declares a public safety emergency which is "not based solely on the fact that the First Amendment activity is occurring," that the police can declare that the assembly must be dispersed.¹⁷⁸ This law is deferential to the rights of protestors and does not allow the state of emergency to be called based on the First Amendment

171. *Id.*

172. Issie Lapowsky, *The Women's March Defines Protest in the Facebook Age*, WIRED (2017), <https://www.wired.com/2017/01/womens-march-defines-protest-facebook-age/> [https://perma.cc/ZA5D-PRVF].

173. Hilary Weaver, Katey Rich, *Galvanized by #MeToo and a Year of Trump, the Women's March Returns to the Streets*, VANITY FAIR (2018), <https://www.vanityfair.com/style/2018/01/womens-march-2018> [https://perma.cc/CQY2-JBXM].

174. METROPOLITAN POLICE DEPARTMENT STANDARD OPERATING PROCEDURES, *HANDLING FIRST AMENDMENT ASSEMBLIES AND MASS DEMONSTRATIONS* (2016), 20.

175. *Id.*

176. First Amendment Rights and Police Standards Act of 2004, D.C. Law 15-352

177. *Id.*

178. First Amendment Rights and Police Standards Act of 2004, *supra* note 176.

actions of the protestors. It seeks to identify individuals who are acting unlawfully, while protecting the rights of the many who protest.

The standard operating procedures repeatedly state the importance of protecting the First Amendment rights of the protesters, but states that “the Department will make reasonable efforts to employ non-arrest methods of crowd management as the primary means of maintaining order. Should such methods prove unsuccessful, arrests shall be made for violations of the law.”¹⁷⁹

While the standard operating procedures favor the planned events, it includes language about unplanned events as well.¹⁸⁰ The language included seems to give the benefit of the doubt to those who engaged in unplanned protests by saying that the protests are often peaceful. It then outlines the steps law enforcement must take including communicating with the protestors to understand the nature, location, and time that the protest will take place.¹⁸¹

When it comes to crowd dispersal and the issuance of warnings, the procedures call for law enforcement to first use verbal directions towards available exits and should only be given when a “significant number of the participants are engaging in, or are about to engage in, unlawful disorderly conduct or violence.”¹⁸² The procedures outline that chemical irritant should not be used unless “necessary to protect officers or others from physical harm or to arrest actively resisting subjects,” and “shall not be used by officers to disperse a First Amendment assembly unless the assembly participants . . . are committing acts of public disobedience engaging public safety” and when chemical irritant is used, the officer must file a police report within 48 hours.¹⁸³

During the Women’s March, the DC police did not attempt to disperse the crowd, use chemical irritants, or make any arrests. They worked to ensure the First Amendment rights of the protestors were protected, even when the protestors engaged in protesting outside the bounds of their permits.

During the Women’s March, the police did not act in accordance with the requirement to stay neutral. The policy states that law enforcement should not engage in “demonstration-related discussion” with participants in an attempt to show “an attitude of neutrality.” It does however encourage officers to use “expressions of friendliness” as a tool to keep the peace. During the march, the police officers wore pink hats, gave high fives to protestors and even took pictures for them. These were not actions that showed the neutrality of the police force.

In the weeks before the protest, it was announced that the police in

179. METROPOLITAN POLICE DEPARTMENT, *supra* note 174 at 3.

180. METROPOLITAN POLICE DEPARTMENT, *supra* note 174. at 5.

181. *Id.* at 6.

182. *Id.* at 18.

183. *Id.* at 35.

Washington, D.C. would turn off their body cameras during both the inauguration and the Women's March the following day.¹⁸⁴ The decision to turn off cameras was supported by the ACLU, who expressed concern that having body cameras on could lead to additional surveillance.¹⁸⁵ They argued that this may have a chilling effect on the protestors.¹⁸⁶ An email from the police department stated, "Officers outfitted with a camera will turn it on when an interaction with a member of the public is initiated—such as the arrival on the scene of a call for service or a crime, a citizen contact or stop, or any high risk incident. The camera will remain on throughout the interaction."¹⁸⁷

As highlighted above, the marches across the United States were celebrated for their peaceful nature.¹⁸⁸ Many repeatedly celebrated that no one was arrested at the main march held in Washington, D.C. stating that this was a perfect example of the right way to protest.¹⁸⁹ But this analysis ignores the demographics of the marchers, and the response of law enforcement in the area. Many news outlets, and reporters on Twitter, reported that police officers were wearing the pink pussy hats and high fiving protestors.¹⁹⁰ These reports often included pictures of the officers smiling alongside the marchers.¹⁹¹ The responses to these images varied. While some celebrated the comradery between the police and the protestors, others pointed to the vastly different reactions by police in other protests including the Black Lives Matter protests.¹⁹² They used images of both to juxtapose the difference between police interaction with white people versus police interaction with people of color.¹⁹³

One article written by a protestor described the police reaction to her and her fellow marchers.¹⁹⁴ She describes that many of the barriers put up the previous day for the inauguration had been taken down, and that this allowed the marchers to take up space and "move freely."¹⁹⁵ She described

184. Thor Benson, *Police Body-Cams Shut Down for Inauguration and Women's March*, DAILY BEAST (2017), <https://www.thedailybeast.com/police-body-cams-shut-down-for-inauguration-and-womens-march> [<https://perma.cc/9JMK-9C4T>].

185. *Id.*

186. *Id.*

187. *Id.*

188. Capps, *supra* note 163.

189. *Id.*

190. Jennifer Calfas, *DC Police Wear Iconic Women's March hats During Protest*, THE HILL (2017), <https://thehill.com/blogs/blog-briefing-room/news/315576-dc-police-wear-iconic-womens-march-hats-during-protest> [<https://perma.cc/7SFX-GN6G>].

191. Calfas, *supra* note 190.

192. Tanya Chen, *People Have Strong Feelings About Cops High-Fiving People in The Women's March In Atlanta*, BUZZFEED NEWS (2017), <https://www.buzzfeednews.com/article/tanyachen/cops-highfived-womens-marchers> [<https://perma.cc/CZH8-BJKW>].

193. *Id.*

194. Jess Zimmerman, *The Myth of the Well-Behaved Women's March* NEW REPUBLIC (2017), <https://newrepublic.com/article/140065/myth-well-behaved-womens-march> [<https://perma.cc/J8MT-57N9>].

195. *Id.*

the police presence as sporadic and that there were no lines of officers in riot gear.¹⁹⁶ She described that because of the sheer number of protestors, they were forced to walk down the street in areas that were beyond the permit of the march without issue, and that many of the protestors were walking with bags that exceeded the limits set by the women's march, yet she did not see a single police officer even question a protestor or look for a bag.¹⁹⁷ Through her story, it is clear that she observed examples where she and others were violating the rules set forth by the organizers and law enforcement, yet no one was looking to police her actions. Rather they allowed the protestors to move throughout the streets and were not scrutinized by an influx of police officers.

It could be argued that the police officers in Washington, D.C. that day were acting in a chivalrous manner, and research shows that "older, white, and deferential women receive more leniency than other women."¹⁹⁸ Because the majority of the women who marched in the Women's March were white, arguably the police reaction was in part a result of the tendency to be lenient towards this group.

C. Politician Reactions

Many politicians responded to the Women's March on Washington through statements via Twitter. Hillary Clinton tweeted her support on January 21st, "Thanks for standing, speaking & marching for our values @womensmarch. Important as ever. I truly believe we're always Stronger Together."¹⁹⁹ President Trump also tweeted about the march, "Watched protests yesterday but was under the impression that we just had an election! Why didn't these people vote? Celebs hurt cause badly."²⁰⁰

Other politicians posted their support on Twitter by posting pictures of themselves taking part in the protest. For example, 2016 Vice Presidential Candidate Tim Kaine tweeted, "I'm still a strong man proud to stand behind strong women. March hard today! #womensmarch #stateofwomen."²⁰¹ Senator Amy Klobuchar tweeted a photo of herself with other marchers with the caption, "Peaceful transition of power yesterday. Peaceful (and big) march today. Here I am greeting hundreds of Minnesotans!"²⁰²

Still other politicians including Senator Cory Booker, Senator Kristen Gillibrand, Senator Clare McCaskill, and Secretary John Kerry were

196. *Id.*

197. *Id.*

198. Brunson, *supra* note 14 at 533-34.

199. Hillary Clinton (@HillaryClinton), TWITTER (Jan. 21, 2017, 7:07 AM), <https://twitter.com/hillaryclinton/status/822822900239581184?lang=en>.

200. Donald Trump (@realDonaldTrump), TWITTER (Jan. 21, 2017, 4:47 AM), <https://twitter.com/realdonaldtrump/status/823150055418920960?lang=en>.

201. Tim Kaine (@timkaine), TWITTER (Jan. 21, 2017, 11:09 AM), <https://twitter.com/timkaine/status/822883727357476864?lang=en>.

202. Amy Klobuchar (@amyklobuchar), TWITTER (Jan. 21, 2017, 6:02 AM), <https://twitter.com/amyklobuchar/status/822806542227476481?lang=en>.

spotted marching alongside the protestors and their pictures were posted on various social media sites.²⁰³ Senator Elizabeth Warren and Senator Kamala Harris both spoke at the rally in Washington.²⁰⁴

Members of the Trump Administration made statements regarding the lack of inclusivity by the members of the march, stating, "It's a shame that the March for Life, which estimates the same number of marchers in DC (650,000 in 2013) and will be happening next Friday, will not get anywhere near the same amount of coverage that this march got—and those pro-life members were NOT welcome at the Women's March."²⁰⁵

The widespread support from politicians for the women's march was clear through not only their words, but their choice to march alongside the protestors and to publicize their support through social media and statements to the press

VI. CONCLUSION

Only three years separated the 2014 Ferguson Uprising and the 2017 Women's March on Washington, but the reactions of the police and media were dramatically different. In 2014, the police department chose to approach the protestors in full riot gear with tanks and other military supplies. They responded to the protestors by shooting rubber bullets, spraying tear gas and arresting large numbers of people for failing to disperse. While politicians responded to the Ferguson protests by making statements questioning the actions of the police, many statements included the trope that both the police and the protestors must take steps to ensure peace.²⁰⁶ Even in light of a Department of Justice Report that found systematic racism in the actions of the Ferguson Police Department that validated the stories of the protestors, they were still seen as a violent and unruly group of protestors.²⁰⁷

One glaring reason for the difference in response to the events was the lack of standard operating procedures and plans put into place in Ferguson. Most notably, law enforcement chose to respond to the uprising the same way they would have responded to a natural disaster or other crisis, rather than a First Amendment protest. This could have been due to the lack of advance notice of the protestors, but is more likely due to the lack of

203. Reena Flores, *Hillary Clinton, Democrats Show Support for Women's March on Washington*, CBS NEWS, <https://www.cbsnews.com/news/womens-march-on-washington-hillary-clinton-politicians/> [<https://perma.cc/62H7-Y4Z4>].

204. *Id.*

205. Mark Hanrahan, *Trump Administration Official Responds to Women's March Demonstrations*, NBCNEWS.COM, <https://www.nbcnews.com/storyline/inauguration-2017/trump-administration-official-responds-women-s-march-demonstrations-n710436> [<https://perma.cc/39K4-M7D3>].

206. *Statement, supra* note 117.

207. Peter Sterne, *St. Louis Drops Charges Against Journalists Arrested in Ferguson*, POLITICO MEDIA (2016), <https://www.politico.com/media/story/2016/05/st-louis-drops-charges-against-journalists-arrested-in-ferguson-004534> [<https://perma.cc/SQ7Z-TWLT>].

protections for protestors. Law enforcement did not aim to protect the rights of protestors to assemble, but rather focused on dispersing crowds and preventing the potential for crime. This was all done while engaging in tactics that escalated the conflict, including the use of large-scale military equipment, less lethal weapons, canines and an unconstitutional “five-second rule” plan. Much of these practices were sporadically documented, if at all, and were implemented by untrained individuals and without clear communication.

Because of the lack of systems of procedures, and the increased discretion by individuals in law enforcement, the structural racism and inherent bias of members of the police force lead to further escalation and overall mismanagement of the response to the death of Michael Brown.

The Women’s March in 2017 had a very different reaction from the police, media, and politicians. While the protest only lasted a day, many of the structures put in place by police enforcement, including removing the barriers from the inauguration the previous day, facilitated a more peaceful reception by police.²⁰⁸ Many politicians went further than just making a statement, and instead made speeches during the rally, joined in on the protests, and took pictures with other marchers that they later posted throughout their social media accounts.²⁰⁹ The media boosted this excitement around the march by lauding the protestors, posting pictures of signs from the protest they identified as clever or inspiring, and celebrating the women who traveled from far away to take part in the protest.²¹⁰

It is clear that part of what led to the lack of arrests and the overall nonviolent nature of the Women’s march were the plans, procedures, and the laws governing the First Amendment protests in Washington, D.C. By having systems in place, and advanced noticed of a rally of this size, the police were accountable to the law. Having these procedures limited the discretion of the police and streamlined communication. But the police did not always follow the law; police were not always neutral in their stations while they wore pink pussy hats and gave the protestors high-fives.

It is unclear what allowed the police to have such a blasé reaction to the men and women who marched during the Women’s March on Washington. It could have been that they shared their opinions, or it could have been that they did not see the largely white, largely female protestors as “other.” It could also be that there was not legacy of discrimination against these white women by the police who were on duty that day.

What is clear is that one of the biggest differences between these two protests was the racial background of the individuals who protested. This colored the way that the police engaged and reacted to their protests. Given the history of over policing of communities of color and the examples of blatant racism that was operating in Ferguson, it is clear that

208. Zimmerman, *supra* note 194.

209. Flores, *supra* note 203.

210. Wickman, *supra* note 160.

race played a factor in the response of the police officers when they faced the protestors in Ferguson in 2014.