

UCLA

UCLA Public Law & Legal Theory Series

Title

Transinstitutional Policing

Permalink

<https://escholarship.org/uc/item/6sj7k8hg>

Journal

Public Law & Legal Theory, 26(1)

Author

Patel, Sunita

Publication Date

2024

TRANSINSTITUTIONAL POLICING

BY

SUNITA PATEL

ASSISTANT PROFESSOR OF LAW
FACULTY DIRECTOR, UCLA VETERANS LEGAL CLINIC

TRANSINSTITUTIONAL POLICING

Sunita Patel

CONTENTS

INTRODUCTION	810
I. THE TRANSINSTITUTIONAL APPROACH TO STUDYING POLICING	818
A. <i>The Continuum of Institutional Police</i>	818
B. <i>Which Institutions?</i>	823
II. POLICING THE PUBLIC	824
A. <i>Red Flagging</i>	826
B. <i>Street Policing</i>	839
C. <i>Wellness Checks</i>	851
III. SURVEILLING THE PUBLIC	862
A. <i>Networked Information</i>	862
B. <i>Bureaucratic Conflict and Cooperation</i>	868
C. <i>Vulnerable Privacy</i>	874
IV. WHAT IS TRANSINSTITUTIONAL POLICING?	882
A. <i>Federal Influence</i>	883
B. <i>The Ties that Bind</i>	887
C. <i>Bureaucratic Lessons</i>	892
CONCLUSION	894

TRANSINSTITUTIONAL POLICING

*Sunita Patel**

Policing has become a permanent fixture within other institutions and occurs in more ways and places than are often recognized. For race-class subjugated communities, this means policing has inserted itself into every facet of life, from education and health care to mass transit and housing. Police serve as instruments of control in many spaces and connect the bureaucratic management of safety inside formal institutions of care, learning, and public services. Police connect these safety services to ordinary street policing and wellness checks in the home.

This Article provides a framework for analyzing policing within institutional settings. I examine K–12 schools, emergency departments, mass transit, veterans health care, public housing, and universities and colleges. This Article describes six features of transinstitutional policing. The first three—red flagging, policing, and wellness checks—show how policing the public relies upon police presence within formal institutions. The second three—networked information, bureaucratic conflict and cooperation, and vulnerable privacy—tie surveillance of the public to transinstitutional policing. This framework highlights the susceptibility of institutions to the logics of policing and the ways policing undermines noncarceral and socially valuable institutional goals.

This Article frames an emerging literature as a transinstitutional approach of studying policing across and between multiple institutional domains. Examining policing through a transinstitutional lens offers a deeper understanding of the corrosive influence of policing on spaces of learning, care, and public services. The punitive and carceral aspects of these settings become amplified and more visible when the institution of policing takes hold. The features analyzed here have made it easy for police leaders and bureaucratic administrators of these institutions to resist police reform, even though the locations I study are places where advocates and institutional clientele contest policing and broader carceral control. Part I provides a continuum of embedded policing and explains why I focused on these particular institutions. Parts II and III provide the six-feature framework. Part IV offers an analysis of how we got here and draws out lessons learned to further understand transinstitutional policing.

* Sunita Patel is an Assistant Professor of Law at the UCLA School of Law. I thank Aziza Ahmed, Amna Akbar, LaToya Baldwin Clark, Bennett Capers, Devon Carbado, Guy-Uriel Charles, Beth Colgan, Blake Emerson, Jonathan Glater, Jerry Kang, Aaron Littman, Dave Marcus, Tracey Meares, Alexandra Natapoff, Fernán Restrepo, Ekow Yankah, and Noah Zatz for helpful feedback on earlier drafts. I received generous comments from participants in the Yale/Harvard/Stanford Juniors Forum, UCLA Junior Faculty Workshop, the UCLA Critical Race Studies Workshop, the Mid-Atlantic People of Color Workshop, and the Duke Law School-University of Chicago Culp Workshop. I thank Sherry Leyson and other members of the UCLA Hugh and Hazel Darling Law Library team for exceptional research assistance. I appreciate invaluable research assistance from Brittany Chung, Chieko Quigley, and Marlin Gramajo. To Chandra Bhatnagar, Ishan, and Padma, you made this possible. Thank you to the editors of the *Harvard Law Review* for their careful review and support.

INTRODUCTION

Police are everywhere. For race-class subjugated communities,¹ police and other carceral² infrastructures have become permanent fixtures in the bureaucratic organizations of daily life, from public schools, emergency departments, and colleges to mass transit, public housing, social service offices, and private apartment buildings. Modern police do much more than respond to or investigate crime in these spaces.³ Police break up fights and counsel children in K–12 schools,⁴ serve as security for public hospitals,⁵ patrol public housing complexes for disturbances,⁶ and respond to clients in mental health distress.⁷ Administrators of formal institutions⁸ increasingly find it natural for police to solve these

¹ I borrow this terminology from Professors Joe Soss and Vesla Weaver, who use the phrase “to call attention to the interweaving of race and class relations, especially as they concern the state’s second face — the activities of governing institutions and officials that exercise social control by means of coercion, containment, repression, surveillance, regulation, predation, discipline, and violence.” Joe Soss & Vesla Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race-Class Subjugated Communities*, 20 ANN. REV. POL. SCI. 565, 567 (2017).

² See MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 297 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1975). Foucault theorizes a “carceral archipelago,” which transports disciplinary control from the prison to various institutions to form a “carceral net” in which people (usually indigent, disenfranchised, or otherwise marginalized) are subjected to carceral technologies, investigation, and discipline. *Id.*

³ See, e.g., Jack R. Greene & Carl B. Klockars, *What Police Do*, in THINKING ABOUT POLICE: CONTEMPORARY READINGS 273, 275–76 (2d ed. 1991) (summarizing studies chronicling police workloads and finding that crimefighting represents a small portion of police work).

⁴ See PETER FINN ET AL., OFF. OF CMTY. ORIENTED POLICING SERVS., U.S. DEP’T OF JUST., A GUIDE TO DEVELOPING, MAINTAINING, AND SUCCEEDING WITH YOUR SCHOOL RESOURCE OFFICER PROGRAM: PRACTICES FROM THE FIELD FOR LAW ENFORCEMENT AND SCHOOL ADMINISTRATION 43 (2005). School Resource Officers (SROs) inculcate themselves within K–12 educational spaces to play the “triad” role of mentor/counselor, educator, and law enforcement officer. *Frequently Asked Questions*, NAT’L ASS’N SCH. RES. OFFICERS, <https://www.nasro.org/faq> [<https://perma.cc/DJ5S-4M39>]; ACLU, BULLIES IN BLUE: THE ORIGINS AND CONSEQUENCES OF SCHOOL POLICING 13 (2017). In one study, seventeen percent of SRO respondents said “mentoring” was their primary role and two percent said “teaching” was. HOLLY KURTZ ET AL., EDUC. WK. RSCH. CTR., SCHOOL POLICING: RESULTS OF A NATIONAL SURVEY OF SCHOOL RESOURCE OFFICERS 14 (2018), <https://epe.brightspotcdn.com/15/03/8b55a2594956a360fee8e0dd454c/school-resource-officer-survey-copyright-education-week.pdf> [<https://perma.cc/ARN2-MJ8P>]. Surveys with SROs indicate some view their roles even more broadly to include “surrogate parent” and “social worker.” Benjamin W. Fisher et al., *The Alignment Between Community Policing and the Work of School Resource Officers*, 25 POLICE Q. 561, 564 (2022).

⁵ HARBOR-UCLA MED. CTR., L.A. CNTY. DEP’T OF HEALTH SERVS., 2021–2022 ORIENTATION/REORIENTATION HANDBOOK 69–70 (2021).

⁶ See, e.g., Michael Schwartz, *Public Housing Patrols Can Mean Safety or Danger*, N.Y. TIMES (Nov. 21, 2014), <https://www.nytimes.com/2014/11/22/nyregion/housing-patrols-can-mean-safety-or-peril-to-residents.html> [<https://perma.cc/9XKV-UDTC>].

⁷ See, e.g., Derek Thompson, *Unbundle the Police*, THE ATLANTIC (June 11, 2020), <https://www.theatlantic.com/ideas/archive/2020/06/unbundlepolice/612913> [<https://perma.cc/WRG7-F2BT>].

⁸ In this Article, I refer to institutions in the manner sociologists define “formal institutions.” In sociology, “institution” is defined as “a relatively durable, socially organized element of social structure that meets social and individual needs and in return influences, secures and maintains

problems; after all, law enforcement performs similar functions in other spaces.⁹ Moreover, laws and policies have developed over time to encourage institutions to adopt internal policing,¹⁰ and often come with funding that propels policing as the de facto mode of handling a broad range of safety concerns.¹¹

This Article provides a “transinstitutional” approach for analyzing the ways policing operates across domains. The features of this approach are based on an examination of police located within K–12 schools, public emergency departments, veterans health care, public and low income housing, mass transit, and universities and colleges.¹² The key contribution of this Article is mapping the transinstitutional intersections and patterns between policing (as its own institution) and other institutional locations, the street, and the home, while attending to the relationships between police and nonpolice personnel across institutional settings. Despite inhabiting realms that seem distinctive in their missions and legal structure, the police and other institutions are united in their commitment to providing services — such as care or education — to varying degrees, and yet together reproduce the logics of

social order and the continuity of social life.” Anna Odrowąż-Coates, *Institution*, in *THE BLACKWELL ENCYCLOPEDIA OF SOCIOLOGY* 1, 1 (George Ritzer & Chris Rojek eds., 2021). “Formal institutions include government and welfare institutions, medical facilities, public transportation, cultural and artistic institutions, and law enforcement agencies (police, courts, prisons, and rehabilitation centers).” *Id.* Finally, “formal institutions develop organized ways of functioning that often mean a bureaucratization of processes.” *Id.*

⁹ See Monica C. Bell, Katherine Beckett & Forrest Stuart, *Investing in Alternatives: Three Logics of Criminal System Replacement*, 11 U.C. IRVINE L. REV. 1291, 1299 (2021) (“[P]olice and penal institutions have become the primary available response to a wide range of social problems, including not only violence but also mental illness, substance abuse, and other behavioral health issues.”); F. Chris Curran et al., *Why and When Do School Resource Officers Engage in School Discipline? The Role of Context in Shaping Disciplinary Involvement*, 126 AM. J. EDUC. 33, 52 (2019) (noting that “administrators and teachers actively sought to bring [School Resource Officers] into the disciplinary fold” with “principals and teachers asking them for help with many disciplinary scenarios” and “[m]any teachers report[ing] that they enjoyed a supportive relationship with the [School Resource Officer]”); Barry Friedman, *Are Police the Key to Public Safety?: The Case of the Unhoused*, 59 AM. CRIM. L. REV. 1597, 1600 (2022) (“Part of the reason police are saddled with so many social problems is because, as the police themselves point out frequently, they are the only ones who respond around the clock, all days of the week and year.”).

¹⁰ For example, schools in some states are now required to have armed officers on campus. See, e.g., Leslie Postal, *Central Florida Charter Schools Struggle to Pay for On-Campus Officers Required by New Law*, ORLANDO SENTINEL (Apr. 6, 2019, 5:09 PM), <https://www.orlandosentinel.com/news/education/os-police-charter-schools-parkland-20180904-story.html> [<https://perma.cc/L363-58JX>].

¹¹ See, e.g., *infra* section IV.A, pp. 883–87; Barbara A. Fedders, *The End of School Policing*, 109 CALIF. L. REV. 1443, 1460–62 (2021) (explaining the sources of federal and state funding that incentivize the hiring of school police and arguing that such funding is less likely to be available for other methods of enhancing safety such as school-based mental health staff). See generally Benjamin Levin, *Criminal Law Exceptionalism*, 108 VA. L. REV. 1381 (2022) (explaining why criminal law and policing are distinct from other alternatives and how policing reflects problems of societal power and punitiveness).

¹² As I explain more in Part I, these institutions are illustrative of the interactions I am attempting to describe in this Article. See *infra* section I.A, pp. 818–22.

carcerality.¹³ And policing changes what it inhabits. The roles police play within formal institutions distort boundaries between policing and other public operations. In fact, they mediate access to social services, education, and care.

My framework connects several strands of policing scholarship. First, this Article generally recognizes an emerging body of what I am calling transinstitutional policing scholarship, which accounts for the overall linkages between policing and various institutions of mass incarceration. This literature recognizes that policing operates in multiple locations and sometimes overlapping contexts in conjunction with social structures and the carceral logics of public institutions.¹⁴ It magnifies how, for race-class subjugated persons, the transinstitutional nature of policing blurs the line between institutions providing care and those imposing control.¹⁵ Transinstitutional policing scholarship examines and contextualizes the rules, norms, and relationships between who is policed and how they are policed. Socio-legal scholars and sociologists also examine policing across institutions to understand contemporary

¹³ I followed several steps to develop this Article's framework. I first asked how police became inculcated into these various institutional contexts, whether the scale or scope changed over time, and what circumstances produced this change. Second, I examined each institution's current bureaucratic infrastructures to understand police hierarchy, institutional support or reluctance for policing, and police oversight mechanisms. The second inquiry led to the third. I asked: What are the boundaries of specialized police agencies? I am interested in boundaries both in terms of geographical borders (are there restrictions to where police operate and why?) and in terms of limits to their functions (how are police duties or arrest authority different than ordinary policing when within institutional spaces?). And finally, given my interest in state violence and management of the poor, unhoused, disabled, and Black, Indigenous, and People of Color (BIPOC), I wanted to understand the consequences of policing for the marginalized clientele the institutions serve.

¹⁴ See generally, e.g., DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES — AND HOW ABOLITION CAN BUILD A SAFER WORLD* (2022) (policing, schools, and welfare); ELIZABETH HINTON, *AMERICA ON FIRE: THE UNTOLD HISTORY OF POLICE VIOLENCE AND BLACK REBELLION SINCE THE 1960S*, at 67–68, 147–54 (2021) (extension of police surveillance into public housing projects and public schools); MARISOL LEBRÓN, *POLICING LIFE AND DEATH: RACE, VIOLENCE, AND RESISTANCE IN PUERTO RICO* 115–16 (2019) (policing and antipoverty governance); JULILLY KOHLER-HAUSMANN, *GETTING TOUGH: WELFARE AND IMPRISONMENT IN 1970S AMERICA* 164–66 (2017) (criminalization and prosecution of welfare fraud); Monica C. Bell, *Anti-segregation Policing*, 95 N.Y.U. L. REV. 650, 656 (2020) (segregation, housing, and policing).

¹⁵ Professors Khiara Bridges and Priscilla Ocen have made similar observations regarding the ways maternal health care, social welfare, and child protective services (or family regulation) regulate the choices poor Black women and girls are able to make. Priscilla A. Ocen, *Birthing Injustice: Pregnancy as a Status Offense*, 85 GEO. WASH. L. REV. 1163, 1165 (2017); Khiara M. Bridges, *Pregnancy, Medicaid, State Regulation, and the Production of Unruly Bodies*, 3 NW. J.L. & SOC. POL'Y 62, 64 (2008); see also Sinikka Elliott & Megan Reid, *Low-Income Black Mothers Parenting Adolescents in the Mass Incarceration Era: The Long Reach of Criminalization*, 84 AM. SOCIO. REV. 197, 201 (2019) (discussing how criminalization of Black youth and Black mothers combine to criminalize the Black family); Dorothy E. Roberts, *Unshackling Black Motherhood*, 95 MICH. L. REV. 938, 938 (1997) (noting that prosecutions of women who use drugs while pregnant tend to target women of color).

welfare and penal regulation.¹⁶ This Article represents the contours and characteristics of transinstitutional policing scholarship.

Second, this Article is situated within the renewed attention to the intersections of carcerality, race, and the criminalization of poverty.¹⁷

¹⁶ See, e.g., Bell, *supra* note 14, at 701–02 (“Although much legal and criminological literature on policing treats it as a closed system, sociological research has shown deep official entanglements between police departments and other arms of the state . . .” *Id.* at 701.); Armando Lara-Millán, *Public Emergency Room Overcrowding in the Era of Mass Imprisonment*, 79 AM. SOCIO. REV. 866, 880–81 (2014) (analyzing the impact of incarceration and hospital staff’s police-like attitudes on emergency department medical care staff triage decisions). Sociologist Loïc Wacquant famously analyzes the “Left hand” of the State, which guides social-welfare institutions, and the “Right hand” of the State, which shapes penal institutions. LOÏC WACQUANT, PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY 6 (2009) (quoting PIERRE BOURDIEU ET AL., *THE WEIGHT OF THE WORLD* 219–28 (Priscilla Ferguson et al. trans., Polity Press 1999) (1993)). He looks at a variety of institutions to underscore how under neoliberalism, the Left hand is weakening while the Right hand is growing stronger. *Id.* This framework is useful for seeing the relationship between the Right and Left hands and the enmeshing of the penal state within the welfare state. See *id.* See generally FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* (Vintage Books 2d ed. 1993) (1971); JONATHAN SIMON, *POOR DISCIPLINE: PAROLE AND THE SOCIAL CONTROL OF THE UNDERCLASS, 1890–1990* (1993).

¹⁷ See, e.g., Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1841 (2020) (“When organizers talk about abolishing the prison industrial complex, they mean to refer not just to the police but also prisons, surveillance, and other forms of penal control. Without a comprehensive look at these interconnected institutions that sustain unprecedented levels of incarceration, we cannot make reform recommendations capable of even denting this hydra-like system.”); Dorothy E. Roberts, *The Supreme Court, 2018 Term — Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 16–19 (2019) [hereinafter Roberts, *Foreword*]; Bell, Beckett & Stuart, *supra* note 9, at 1298; Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 860 (2021); Ngozi Okidegbe, *The Democratizing Potential of Algorithms?*, 53 CONN. L. REV. 739, 744 (2022); David Garland, *The Current Crisis of American Criminal Justice: A Structural Analysis*, 6 ANN. REV. CRIMINOLOGY 43, 44–45 (2023); Michelle S. Phelps, *Possibilities and Contestation in Twenty-First-Century US Criminal Justice Downsizing*, 12 ANN. REV. L. & SOC. SCI. 153, 160 (2016); Katherine Beckett, *The Politics, Promise, and Peril of Criminal Justice Reform in the Context of Mass Incarceration*, 1 ANN. REV. CRIMINOLOGY 235, 237–39 (2018); Levin, *supra* note 11, at 1409–14. See generally Fanna Gamal, *The Miseducation of Carceral Reform*, 69 UCLA L. REV. 928 (2022); Kate Weisburd, *The Carceral Home*, 103 B.U. L. REV. (forthcoming 2023); MARIE GOTTSCHALK, *CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS* (2015); Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156 (2015); MARIAME KABA, *WE DO THIS ‘TIL WE FREE US: ABOLITIONIST ORGANIZING AND TRANSFORMING JUSTICE* (Tamara K. Nopper ed., 2021); Katherine Beckett & Naomi Murakawa, *Mapping the Shadow Carceral State: Toward an Institutionally Capacious Approach to Punishment*, 16 THEORETICAL CRIMINOLOGY 221, 238 (2021).

I am drawing from a long literature describing and theorizing the criminalization of poverty. See generally PETER EDELMAN, *NOT A CRIME TO BE POOR: THE CRIMINALIZATION OF POVERTY IN AMERICA* (2017); DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2001); KAARYN S. GUSTAFSON, *CHEATING WELFARE: PUBLIC ASSISTANCE AND THE CRIMINALIZATION OF POVERTY* 51 (2011) [hereinafter GUSTAFSON, *CHEATING WELFARE*]; Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. & CRIMINOLOGY 643, 646–47 (2009); Priscilla A. Ocen, *The New Racially Restrictive Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing*, 59 UCLA L. REV. 1540, 1565–68 (2012); ELIZABETH HINTON, *FROM THE WAR ON POVERTY TO THE WAR ON*

Specifically, this Article joins scholarship examining how noncriminal (and even nonregulatory) agencies and institutions replicate carceral practices and create subordinating spaces.¹⁸ A decade or more of intensive study on misdemeanors and lower court practices has provided indelible insights into the ways crime and poverty merge under the rubric of law.¹⁹ Recent scholarship expands the frame from courts as the primary site of punishment to the ways formal institutions use noncriminal and sublegal charges as connections to policing and surveillance.²⁰

I note that looking at a more general picture risks oversimplification, incorrect generalizations, and the absence of contextual nuance. However, scholars have examined institutions and organizations in many ways, and the study of street-level bureaucracies requires a certain amount of telescoping to draw general conclusions. My hope is that this Article digests the insights of the rich and important work of others. This Article's approach benefits from the important thick descriptions, sociological accounts, narrative storytelling, and ethnography of other scholars and recognizes them to be key methodologies for understanding law and its impact. Ultimately, to address the harms of policing, we need both abstract and specific views — detailed analysis of each institution offers rich accounts from which others can develop broader theory and frameworks.

This Article builds on these different strands of scholarship to develop specific insights. The transinstitutional framework I describe in this Article allows us to observe how pervasively the police have come to operate in institutions. Likewise, formal institutions use a myriad of noncriminal, administrative, and sublegal avenues to police and surveil

CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA 3 (2016); KOHLER-HAUSMANN, *supra* note 14, at 1–2.

This intersection includes mass criminalization. Professor Devon Carbado uses this phrase to “mean the criminalization of relatively nonserious behavior or activities and the multiple ways in which criminal justice actors, norms, and strategies shape welfare state processes and policies.” Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479, 1487 (2016).

¹⁸ Professor Dorothy Roberts's recent work argues that family policing combines state supervision and control in ways that make Child Protective Services an arm of the carceral state. ROBERTS, *supra* note 14, at 29–30; see also Dorothy Roberts, *Family Policing as Counterinsurgency and the Gathering Abolitionist Force*, 74 AM. Q. 221, 221 (2022). Relatedly, Professor Monica Bell looks beyond policing's crime-control functions to examine the noncriminal role of police in maintaining racial residential segregation. Bell, *supra* note 14, at 701–28; see also LESLIE PAIK, TRAPPED IN A MAZE: HOW SOCIAL CONTROL INSTITUTIONS DRIVE FAMILY POVERTY AND INEQUALITY 14 (2021) (arguing that a “multi-institutional maze shows the repercussions of . . . individualized practices *across* institutions, as institutional obligations compound one another and the discretionary actions of frontline workers in one agency can affect the work in another, propelling families out of or deeper into the maze”).

¹⁹ See sources cited *infra* notes 82, 164.

²⁰ See sources cited *supra* notes 16–17.

race-class subjugated communities.²¹ Across institutions, police aim to maintain a type of public order.²² This, in turn, enables further monitoring and potentially blurs the distinction between civil and criminal, creating more court involvement based on police interactions when a person accesses public services, education, or care.²³

Most importantly, taking a step back and looking across settings helps us answer the following questions from a transinstitutional vantage point: Do patterns arise when police operate within locations providing care, education, or public welfare? And if so, what are the patterns? This Article answers the first question in the affirmative, and provides a framework within which to view policing as part of dynamics that include both an institution's carceral logics²⁴ and its racialized

²¹ See Akbar, *supra* note 17, at 1789–802. Policing in formal institutions hides large parts of the police apparatus in plain sight; cf. Beckett & Murakawa, *supra* note 17, at 222 (“[W]e suggest that criminal law and criminal justice institutions increasingly represent only the most visible tentacles of penal power.”). Determining exactly what the police do and how we came to use police for nearly every social function is a prominent feature in recent policing scholarship. See Monica C. Bell, *Next-Generation Policing Research: Three Propositions*, J. ECON. PERSPS., Fall 2021, at 29, 30–33. Indeed, a broad project among law scholars aims to develop an understanding of police functions. See Barry Friedman, *Disaggregating the Policing Function*, 169 U. PA. L. REV. 925, 930 (2021) (“[W]e need to look beyond minimizing the harms of policing and focus on what it is exactly the police do daily, asking whether the police are the institution best suited to the panoply of societal needs they confront regularly.”); Levin, *supra* note 11, at 1398 (“[T]he integration of sociological and ethnographic methods into the criminal legal academy has invited a shift away from exceptionalist or idealized theories of what the criminal law ought to be to thick descriptions of what the criminal law is.”).

²² “Disorder” policing is known to encompass a variety of policing strategies to address the broken windows theory of crime popularized by Professors George Kelling and James Wilson. George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, THE ATLANTIC (Mar. 1982), <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465> [<https://perma.cc/A4MR-XDR8>]. Often seen as a subsection of community policing, the broken windows theory posits that crime can be prevented by addressing relatively minor signs of disorder like panhandling and loitering. See *id.* Police departments have implemented disorder policing strategies like “order maintenance” and “zero tolerance” policing or comparatively less severe policies like problem-oriented policing. Anthony A. Braga, *Crime and Policing Revisited*, NEW PERSPS. POLICING, Sept. 2015, at 1, 14, <https://www.ncjrs.gov/pdffiles1/nij/248888.pdf> [<https://perma.cc/2CKE-5RQV>]. See generally BERNARD E. HARCOURT, ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING 23–27 (2001) (discussing Wilson and Kelling’s broken windows theory and the order maintenance approach to crime control).

²³ I benefit from Professor Issa Kohler-Hausmann’s sociological explanation of New York City’s Adjudgment in Contemplation of Dismissal (ACD), where a court dismisses a charge after a court-designated period without a subsequent arrest; however, the ACD allows the court and district attorney to monitor the person’s behavior over time and ratchet up punishment with subsequent court encounters. ISSA KOHLER-HAUSMANN, MISDEMEANORLAND 80, 83–85 (2018). Similarly, as I will show, subcriminal flagging of institutional records provides an opportunity for predisposition of a person’s criminality and ratchets up the consequences of noncriminal actions that step outside the norms, values, or rules established in the particular setting. See *infra* section II.A, pp. 826–39.

²⁴ Carceral logic can be understood as a punishment mindset that permeates noncarceral locations or functions. See KABA, *supra* note 17, at 125; Roberts, *Foreword*, *supra* note 17, at 7, 18. See generally Christy E. Lopez, *Abolish Carceral Logic*, 17 STAN. J.C.R. & C.L. 379, 386–87 (2022).

social system.²⁵ The interweaving of policing and other domains is essential to examine because the problem is not solely police, but also that policing exploits the ways broader phenomena and institutions of care embed carcerality via personnel, laws, and policies. This Article further considers: Where did the transinstitutional design features described within originate? The hope is future work will then ask how can our understanding of transinstitutional policing shape how we transform, scale back, or eliminate the role police play in such settings.

A broader understanding of the ways institutions embed police and use them to amplify their own carceral logics is essential to anyone interested in police reform.²⁶ When scholars and advocates focus on one site for analysis or policy reforms, they may lose sight of the importance of transinstitutional policing dynamics. Reforming one institution's harmful reliance on police may be like putting a finger in the hole of a dam — race-class subjugated community members traverse many institutions that subject them to surveillance and potential police interactions.²⁷ A better understanding of patterns across organizational contexts also brings to light the challenges with removing police from public institutions and adopting alternative methods or personnel to address the root causes of the social problems. Today, typical reforms include shifting roles and resources to the very institutions I examine, despite their functioning within what sociologists call the “shadow carceral state.”²⁸ The systems that hold the most popular alternatives to policing — such as health care or schools — are not only themselves

²⁵ Racialized social systems are defined as “societies in which economic, political, social, and ideological levels are partially structured by the placement of actors in racial categories or races.” Eduardo Bonilla-Silva, *Rethinking Racism: Toward a Structural Interpretation*, 62 AM. SOCIO. REV. 465, 469 (1997). This approach is recognized in legal scholarship. See, e.g., Paul Butler, *The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419, 1434 (2016) (“[The critique] views police practices against blacks as symptoms of structural racism and white supremacy.”).

²⁶ See generally Marie Gottschalk, *Dismantling the Carceral State: The Future of Penal Policy Reform*, 84 TEX. L. REV. 1693, 1695 (2006) (focusing on “the potential building blocks for a successful reform coalition”).

²⁷ See, e.g., Devon W. Carbado, *Predatory Policing*, 85 UMKC L. REV. 545, 551–52 (2017) (discussing mass criminalization in schools).

²⁸ Professors Katherine Beckett and Naomi Murakawa developed the concept of a “shadow carceral state,” Beckett & Murakawa, *supra* note 17, at 222, to describe “the subtle, complex, and often hidden politics that lead institutional actors to create novel yet consequential pathways that lead directly to the carceral state,” *id.* at 238. They look to the legal liminality that administrative agencies and actors hold within immigration enforcement and parole revocation. *Id.* at 222. These agencies and actors, they argue, blend civil, administrative, and criminal authority. *Id.* at 235. My project similarly maps the “legally hybrid and institutionally variegated” aspects of penalty through the “submerged, serpentine” tentacles of transinstitutional policing within schools, hospitals, mass transit, and public housing. *Id.* at 222. I also aim to make visible a subterranean aspect of the carceral state.

embedded with police, but also carry their own carceral logics.²⁹ Thus, when social workers or nurses take on the problem-solving or crisis management functions of police, they risk replicating police logics because their institutional homes are imbued with carceral logics.³⁰

Foregrounding policing transinstitutionally has several implications for the organizational context. For one, policymakers and administrators should reconsider the rationales behind placing so-called specialized police forces inside public institutions. While each distinct institutional bureaucracy wants to believe its police can be the exception, appreciation for the transinstitutional character of policing reveals the pitfalls of such thinking. I debunk a prevailing myth that bureaucratic administrators with sole or shared authority over specialized police can temper the excesses of policing: violence, racial disparities, and dignitary harms.³¹

My framework also reveals another transinstitutional problem when institutions of care use police: police undermine the host institution's imprimatur of authority. When police exercise the full scope of their authority, they undermine the host institution's legitimacy, create distance and distrust, and erode its ability to serve the target constituency.³² Institutional police have failed to be more attentive to the needs of marginalized people despite training, agreements, values statements, policies, and law.³³ Instead, the North Star of police remains

²⁹ Cf. ROBERTS, *supra* note 14, at 25 (“Some activists even recommended transferring money, resources, and authority from police departments to health and human services agencies that handle child protection. These proposals ignored how the family-policing system surveils and represses Black and other marginalized communities in ways similar to the law enforcement systems condemned by the protesters.”); Bell, Beckett & Stuart, *supra* note 9, at 1301–02 (“There is a large body of research cataloguing the perils of the welfare state for poor people and communities of color — surveillance, blame and assessments of desert, humiliation and stigmatization, administrative burden, reinforcement of racial hierarchy, and the welfare state’s own carceral and neoliberal logics and justifications.”).

³⁰ Professor Roberts argues family policing is part of the carceral regime abolitionists are working to dismantle. ROBERTS, *supra* note 14, at 29. The same can be said for transit police, school police, housing police, and hospital police.

³¹ See *infra* section III.B, pp. 868–74.

³² See Megan Y. Harada et al., *Policed Patients: How the Presence of Law Enforcement in the Emergency Department Impacts Medical Care*, 78 ANNALS EMERGENCY MED. 738, 745 (2021); Andrea N. Montes et al., *Blurred and Confused: The Paradox of Police in Schools*, 15 POLICING 1546, 1557 (2020). See generally Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2072 (2017) (“African Americans, particularly those who are poor or who live in high-poverty or predominately African American communities, tend to have less trust not only in police, but also in other governmental institutions . . .”); Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 CRIME & JUST. 283, 295 (2003).

³³ See HINTON, *supra* note 14, at 10–11; *infra* section II.A, pp. 826–39. Professor Forrest Stuart’s theory of therapeutic policing offers a more nuanced and careful understanding of the regulatory nature of social agencies, such as schools and health care agencies, and the disciplinary dimensions of policing. FORREST STUART, DOWN, OUT, AND UNDER ARREST: POLICING AND EVERYDAY LIFE IN SKID ROW 8, 15 (2016). See generally Monica C. Bell, *Situational Trust: How*

management³⁴ and regulation. Whether out of naivety, willful ignorance of the realities of policing, or something more nefarious, bureaucratic leaders seem to ignore the likely harmful and potentially deadly outcomes of facilitating police engagement with their constituents. When faced with the reality across institutional settings that this Article presents, the problems are more difficult to ignore.

This Article proceeds in four Parts. Part I provides an overview of what I am calling the transinstitutional approach. I describe a continuum of embedded policing, and explain why particular institutions are studied here.

Parts II and III provide six institutional design features supporting and facilitating the imbrication of police and policing logics for addressing safety. The first three — red flagging, street policing, and wellness checks — show how policing the public relies upon police presence within formal institutions. The second three — networked information, bureaucratic conflict and cooperation, and vulnerable privacy — tie surveillance of the public to transinstitutional policing.

Part IV draws out the reasons policing operates so similarly in each location and other lessons learned. Ultimately, to transform institutions and reform police on the way to abolition, we must better understand policing across and between formal institutions. That is my project.

I. THE TRANSINSTITUTIONAL APPROACH TO STUDYING POLICING

A. *The Continuum of Institutional Police*

We might think of the ways police embed themselves within institutions as being on a continuum. Mapping the continuum provides helpful context for this Article's framework because the differences in authority, oversight, and leadership have yielded fewer distinctions in policing and surveillance than organizational leaders might expect.

On one end of the continuum are full-fledged internal police agencies. Some institutions have created their own police forces and typically require statutory authorization to carry out police functions. These are

Disadvantaged Mothers Reconceive Legal Cynicism, 50 LAW & SOC'Y REV. 314, 316 (2016); DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY*, at xii (2001).

³⁴ See KOHLER-HAUSMANN, *supra* note 23, at 4 (arguing lower courts operate under a “managerial model” that is “concerned with managing people through engagement with the criminal justice system over time” (emphasis omitted)). Through this model, court actors use “the assorted tools of criminal law and procedure to sort, test, and monitor people over time.” *Id.* at 5.

most commonly the police found in universities and colleges³⁵ and veterans health care facilities.³⁶

Administrators in these institutions hire, fire, and deputize the officers.³⁷ They decide police structure, training, and patrol assignments.³⁸ Such police's authority may be limited and require agreements with local law enforcement for arrests, transportation, wellness checks, or other duties, and such police often use local police agencies as backup.³⁹ Agreements also govern the authority and way local police may engage

³⁵ See, e.g., CAL. EDUC. CODE § 72330 (West 2022) (California community college police); *id.* § 89560 (California State University police); *id.* § 92600 (University of California police); CONN. GEN. STAT. § 10a-156b (2023) (University of Connecticut special police forces); FLA. STAT. § 1012.97 (2022) (state university police); MD. CODE ANN., EDUC. § 13-601 (West 2022) (University of Maryland Police Force); see also *Postsecondary Campus Safety 2022: Campus Police Forces*, EDUC. COMM'N STATES (Oct. 2022), <https://reports.ecs.org/comparisons/postsecondary-campus-safety-2022-01> [<https://perma.cc/SJ57-PL7D>] (collecting state authority on policies creating police forces, or employing persons as police, on campuses).

³⁶ Congress has authorized the Veterans Health Administration (VHA) to create its own police force. See 38 U.S.C. §§ 901–902.

³⁷ See, e.g., ARIZ. REV. STAT. ANN. § 15-1897 (2017) (granting certain private postsecondary institutions authority to appoint peace officers to supplement state law enforcement agencies); COLO. REV. STAT. § 24-7.5-101 (2022) (granting state institutions of higher education authority to employ police officers); IND. CODE § 21-39-4-2 (2022) (granting state educational institution boards of trustees powers to appoint police officers); N.Y. EDUC. LAW § 355(2)(l) (McKinney 2022) (granting state university trustees authority to appoint and remove police officers); see also YALE UNIV. POLICE DEP'T, ORDER 103: LAW ENFORCEMENT AUTHORITY 2 (2021), <https://your.yale.edu/sites/default/files/103-law-enforcement-authority.pdf> [<https://perma.cc/3ELY-PTSR>] (“Personnel policies and procedures established by the University apply to Yale University police officers in all matters of promotion, termination, discipline and employment and are administered solely by the University.”).

³⁸ See, e.g., UNIV. WIS.-MADISON POLICE DEP'T, POLICY 11.1, ORGANIZATIONAL STRUCTURE (2020), <https://uwpd.wisc.edu/content/uploads/2015/08/11.1-Organizational-Structure-06.14.pdf> [<https://perma.cc/T5EA-W4N9>]; MATTHEW E. CARMICHAEL, UNIV. OF OR. POLICE DEP'T, DEPARTMENT TRAINING PLAN 10, https://police.uoregon.edu/sites/police1.uoregon.edu/files/uopd_training_plan.pdf [<https://perma.cc/GZ4C-A6GA>]; PHILA. POLICE DEP'T & UNIV. OF PA. POLICE DEP'T, MEMORANDUM OF UNDERSTANDING BETWEEN PHILADELPHIA POLICE DEPARTMENT & UNIVERSITY OF PENNSYLVANIA POLICE DEPARTMENT, <https://www.publicsafety.upenn.edu/files/Memorandum-of-Understanding-Between-Philadelphia-Police-Department-University-of-Pennsylvania-Police-Department-.pdf> [<https://perma.cc/4JSE-JT8F>].

³⁹ See, e.g., COLUMBIA UNIV., COLUMBIA UNIVERSITY PUBLIC SAFETY 2022 ANNUAL SECURITY AND FIRE SAFETY REPORT 5 (2022), <https://publicsafety.columbia.edu/sites/default/files/content/SecurityReport2022.pdf> [<https://perma.cc/EH49-4FCR>] (“[Department of Public Safety staff] authority to reasonably detain individuals suspected of criminal activity on University property is the same as the authority of any property owner or property owner’s designee. These officers are not sworn and do not carry firearms, nor do they have police powers including those of arrest.”); CITY OF CINCINNATI & UNIV. OF CINCINNATI, MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF CINCINNATI AND UNIVERSITY OF CINCINNATI TO ENGAGE IN MUTUAL AID (2021), <https://www.cincinnati-oh.gov/noncms/cmgr/memo/index.cfm?action=public.viewpdf&name=42642.pdf> [<https://perma.cc/MX6Z-MLYH>] (clarifying University of Cincinnati Police Department’s off-campus authority); JOHNS HOPKINS POLICE DEP'T & THE POLICE DEP'T OF BALT. CITY, MEMORANDUM OF UNDERSTANDING BETWEEN THE JOHNS HOPKINS POLICE DEPARTMENT AND THE POLICE DEPARTMENT OF BALTIMORE CITY: COORDINATION OF LAW ENFORCEMENT RESPONSIBILITIES 5–6 (2022), <https://publicsafety.jhu.edu/assets/uploads/sites/9/2022/12/Final-Executed-MOU-12022022.pdf> [<https://perma.cc/SB8L-K7BZ>]; PHILA. POLICE DEP'T & UNIV. OF PA. POLICE DEP'T, *supra* note 38.

with individuals within the institutions. Thus, local police engaging with students at a university or college, or with patients at a veterans hospital, will generally request access or provide a courtesy heads-up to the institution's police force.⁴⁰ Often, the institution's police force accompanies the local police in their operations, whether to effectuate an arrest, question a student or patient, or engage in a wellness check.⁴¹ The institutional police officers extend their policing into the community, not only within the confines of the institution or surrounding property.⁴²

On the other end of the continuum are contexts where local police departments assign specific units of police officers to the institution. Hospital emergency departments and public housing might fit on this end of the spectrum.⁴³

In such contexts, authority and hiring decisions largely remain with municipal police departments, though specific training and rules are sometimes developed by the institutions.⁴⁴ Hospital administrators and public housing authorities often contract with local police to serve as security and police inside and outside an institution's space.⁴⁵ For

⁴⁰ See, e.g., SYRACUSE POLICE DEP'T & SYRACUSE UNIV. DEP'T OF PUB. SAFETY, MEMORANDUM OF UNDERSTANDING BETWEEN SYRACUSE POLICE DEPARTMENT & SYRACUSE DEPARTMENT OF PUBLIC SAFETY (2014), <https://dps.syr.edu/wp-content/uploads/2016/01/MOU-Signed-12-3-2014.pdf> [<https://perma.cc/K6JK-KTFW>] (requiring Syracuse Police Department (SPD) to contact university police department in advance of executing warrant or conducting investigation on the University campus and requiring campus police officer to "accompany and/or assist SPD personnel").

⁴¹ See *infra* section II.C, pp. 851–61.

⁴² See Jamie P. Hopkins & Kristina Neff, *Jurisdictional Confusion that Rivals Erie: The Jurisdictional Limits of Campus Police*, 75 MONT. L. REV. 123, 137 (2014). Veterans Affairs police are able to interact with the community through their ability to "conduct investigations, on and off Department [of Veterans Affairs] property." 38 U.S.C. § 902(a)(1)(E); U.S. DEP'T OF VETERANS AFFS., HANDBOOK 0730/3, SECURITY AND LAW ENFORCEMENT 9 (2014).

⁴³ See, e.g., ASHLEY SCHOENFISCH & LISA POMPEII, IHSS FOUND., WEAPONS USE AMONG HOSPITAL SECURITY PERSONNEL 10 (2014), https://cdn.ymaws.com/www.iahss.org/resource/collection/48907176-3B11-4B24-A7C0-FF756143C7DE/2014_Weapons_use_among_hospital_security_personnel.pdf [<https://perma.cc/E37N-UJDD>].

⁴⁴ See, e.g., Press Release, NAACP Legal Def. & Educ. Fund, Federal Judge Approves Public Housing Training for NYPD Officers (May 29, 2019), <https://www.naacpldf.org/wp-content/uploads/Davis-Housing-Training-Release.pdf> [<https://perma.cc/5WY4-YBSW>] (describing the adoption of public housing-specific training for New York Police Department (NYPD) officers); Sara Jacoby et al., *When Health Care and Law Enforcement Overlap*, LEONARD DAVIS INST. OF HEALTH ECON. (May 2, 2022), <https://ldi.upenn.edu/our-work/research-updates/when-health-care-and-law-enforcement-overlap> [<https://perma.cc/PN3D-FY5J>] (proposing "local hospital/law enforcement partnerships tasked with creating policies to guide hospital law enforcement in collaboration with members of the community"); JOSEPH M. MCKENNA & ANTHONY PETROSINO, NAT'L INST. OF JUST., SCHOOL POLICING PROGRAMS: WHERE WE HAVE BEEN AND WHERE WE NEED TO GO NEXT 29–31 (2022), <https://www.ojp.gov/pdffiles1/nij/301592.pdf> [<https://perma.cc/7GBG-DVZH>].

⁴⁵ See, e.g., Cassandra Garibay, *Fresno Housing Authority Renews \$300,000 Contract with Police Despite Critics' Concerns*, FRESNO BEE (May 27, 2021, 2:02 PM), <https://www.fresnobee.com/news/local/fresno-housing-authority-renews-300000-contract-with-police-despite-critics-concerns/article248888800-2021-05-27>.

example, since 1995, the Housing Bureau of the New York Police Department has patrolled and policed New York Public Housing Authority properties and private properties in low-income areas where landlords have agreed to provide access to police trespass.⁴⁶ This division includes over two thousand police officers assigned to low-income housing areas.⁴⁷ The Los Angeles Sheriff's Department similarly assigns deputies to serve as security and police within the Harbor-UCLA health system.⁴⁸

K-12 schools and mass transit fall within a middle category of the continuum, where institutions operate in an either/or, or either/and, space. Depending on the geographic location, these institutions either operate purely institutional police forces *or* contract with local police; alternatively, these institutions use their own police force *and* contract with local police. School policing varies between districts due to “local preferences and expectations.”⁴⁹ There are in-house police forces serving a number of larger school districts, including in Dallas, Houston, Miami-Dade, and Los Angeles.⁵⁰ In one national study of School Resource Officers (SROs), those who worked in urban areas, as well as those who worked in urban and higher-minority school districts, were “more likely than their peers to work for a school police department as opposed to a local police or sheriff's department.”⁵¹ These “in-house” police forces were created with the goal of separating inside police from the outside (local) police on the view that doing so would allow school officials to exert more control over hiring and training for the particularities of each school.⁵² There is little to suggest different outcomes in

fresnobee.com/fresnoland/article251710188.html [https://perma.cc/NF93-GAAX] (reporting on the renewal of a \$300,000 contract between the City and County Boards of Commissioners of the Fresno Housing Authority and the Fresno Police Department, despite some community opposition); Robert F. Smith, *Policing Paradox*, THE COMMONS (Mar. 1, 2023), https://www.commonnews.org/issue/704/ATM_policing [https://perma.cc/B9R7-XQMK] (describing how in Windham County, Vermont, sheriff's departments have “been contracted to provide security for unstable patients in emergency rooms waiting for psychiatric hospital beds to become available”).

⁴⁶ See Mireya Navarro & Joseph Goldstein, *Policing the Projects of New York City, At a Hefty Price*, N.Y. TIMES (Dec. 26, 2013), https://www.nytimes.com/2013/12/27/nyregion/policing-the-projects-of-new-york-city-at-a-hefty-price.html [https://perma.cc/VBR4-E7TY].

⁴⁷ *Id.*

⁴⁸ See *Health Workers Protest After Patient Was Shot by a Deputy at Hospital*, NBC L.A. (Oct. 14, 2020, 10:03 AM), https://www.nbclosangeles.com/news/local/health-care-providers-demonstrate-harbor-ucla-hospital-deputy-shooting-patient/2443679 [https://perma.cc/JA2D-63DU] (confirming the existence of the Harbor-UCLA-based sheriff's unit).

⁴⁹ Fisher et al., *supra* note 4, at 564. Students at more than half of the nation's schools are monitored by security officers, many of whom are law enforcement officers assigned through contractual relationships with local police. See *id.* at 562.

⁵⁰ Stephen Sawchuk, *School Resource Officers (SROs), Explained*, EDUC. WK. (Nov. 16, 2021), https://www.edweek.org/leadership/school-resource-officer-sro-duties-effectiveness [https://perma.cc/H7E9-J3LD].

⁵¹ KURTZ ET AL., *supra* note 4, at 11.

⁵² Sawchuk, *supra* note 50.

terms of police violence or referrals to the juvenile justice system despite the variation.⁵³

Mass transit is another system in the middle of the continuum where the structure varies. Some municipalities have chosen to institutionalize transit police agencies separately from local police, and others have patched together policing resources using one or more local and/or institutional police contracts.⁵⁴ The Bay Area Rapid Transit (BART) in the San Francisco area and the Southeastern Pennsylvania Transit Authority (SEPTA) operate institutional police forces.⁵⁵ New York City operates with a large New York Police Department (NYPD) Transit Bureau and the Metropolitan Transportation Authority (MTA) Police Department.⁵⁶ Los Angeles Metro engages in different contracts with the sheriff, Long Beach and Los Angeles police departments, and private security.⁵⁷

⁵³ See Michael Heise & Jason P. Nance, “Defund the (School) Police”? Bringing Data to Key School-to-Prison Pipeline Claims, 111 J. CRIM. L. & CRIMINOLOGY 717, 721 (2021); Joscha Legewie & Jeffrey Fagan, *Aggressive Policing and the Educational Performance of Minority Youth*, 84 AM. SOCIO. REV. 220, 221 (2019) (finding one NYPD program “lowered the educational performance of African American boys, which has implications for child development, economic mobility, and racial inequality”).

⁵⁴ For examples of transit police agencies separate from local police, see *Transit Police*, SEPTA, <https://www5.septa.org/about/security> [<https://perma.cc/2FWT-CAAV>] (policing the Southeastern Pennsylvania Transportation system); and *About Us*, N.J. TRANSIT POLICE, <https://police.njtransit.com/aboutus> [<https://perma.cc/E29U-8STX>] (policing the statewide transit system). For examples of transit authorities using multiple law enforcement agencies, see *Transit Police*, RTD, <https://www.rtd-denver.com/rider-info/safety-and-security/rtd-transit-police> [<https://perma.cc/83FP-3W9C>] (policing by Regional Transportation District-Denver transit police, law enforcement partners, and private security); *Patrol*, KING CNTY. METRO, <https://kingcounty.gov/depts/transportation/metro/about/transit-police/operations/patrol.aspx> [<https://perma.cc/2KKS-FJWG>] (policing by the King County Sheriff’s Department); and *Security*, CHI. TRANSIT AUTH., <https://www.transitchicago.com/security> [<https://perma.cc/6YQF-76TM>] (policing by the Chicago Police Department). For an example in which units are assigned to transit systems, see *Police — Transit Enforcement Unit*, CITY OF PHX., <https://www.phoenix.gov/publictransit/police-transit-enforcement-unit> [<https://perma.cc/P6DJ-Y48X>] (policing by a section of the Phoenix Police Department assigned to the Phoenix Public Transit Department).

⁵⁵ *BART Police*, BAY AREA RAPID TRANSIT, <https://www.bart.gov/about/police> [<https://perma.cc/NHQ6-SU7H>]; *Transit Police*, SEPTA, *supra* note 54.

⁵⁶ *Transit, Housing & Transportation*, NYPD, <https://www1.nyc.gov/site/nypd/bureaus/transit-housing/transit-housing-landing.page> [<https://perma.cc/H8HW-8NPZ>] (policing NYC subway); *MTA Police*, MTA, <https://new.mta.info/agency/mta-police> [<https://perma.cc/X32P-SDTS>] (policing NYC subway, Long Island Railroad, Metro-North, and Staten Island Railway).

⁵⁷ See Robert Garrova, *LA Metro Votes to Extend Law Enforcement Contracts and Fund Public Safety Alternatives*, LAIST (Dec. 2, 2021, 4:30 PM) <https://laist.com/news/transportation/la-metro-votes-to-fund-law-enforcement-contracts-and-public-safety-alternatives> [<https://perma.cc/JUH7-D22S>]; *Transit Policing Services*, L.A. CNTY. SHERIFF’S DEP’T, <http://shq.lasnews.net/pages/PageDetail.aspx?id=2184> [<https://perma.cc/Q3KN-GGRS>] (explaining a unit of the L.A. County Sheriff’s Department that provides contract transit services to the L.A. Metropolitan Transportation Authority and the Southern California Regional Rail Authority); ALL. FOR CMTY. TRANSIT — L.A. ET AL., *METRO AS A SANCTUARY: REIMAGINING SAFETY ON PUBLIC TRANSIT* 9, <https://www.act-la.org/wp-content/uploads/2022/01/Metro-as-a-Sanctuary-ACT-LA.pdf> [<https://perma.cc/6TRK-L3WV>].

B. Which Institutions?

A central contribution of this Article is what I'm naming a transinstitutional approach for studying the ways policing intersects with various institutional domains.

My project analyzes multiple sites of police imbrication — K–12 education, public emergency departments, public and private housing, mass transit, veterans health care, and colleges and universities.⁵⁸ One may ask, why these locations, and to what extent do other settings fit the same pattern? My goal is not to outline transinstitutional policing vis-à-vis all relevant institutions. Instead, I have chosen institutions illustrative of the interactions and phenomena I am attempting to describe in this Article. My goal is to provide a general sense of the characteristics of transinstitutional policing and institutional design features to allow scholars and advocates to understand the ecosystem of managerial institutions that impact the lives of race-class subjugated communities. Similar to my prior project examining the intersection of veterans health care and policing,⁵⁹ I am paying attention to the institutions that serve race-class subjugated communities and that have been put forward as potential alternatives to police. The popular sentiments of #CounselorsNotCops in schools⁶⁰ or #HousingNotHandcuffs show a juxtaposition of public institutions solving social problems on the one hand and policing or jails on the other.⁶¹

I adopt a layered view on whether an institution is susceptible to the infusion of law enforcement. Settings within the welfare state are more likely to adopt a policing response to safety,⁶² and they are therefore more central to the institutional design features this Article outlines. They naturalize policing into their core functions, even when doing so is contested and in tension with aspects of their mission.⁶³ Other locations this Article examines are more peripheral to the framework I provide. Considering peripheral institutions (for example, colleges and

⁵⁸ See *infra* Parts II–III, pp. 824–82.

⁵⁹ See generally Sunita Patel, *Embedded Healthcare Policing*, 69 UCLA L. REV. 808 (2022).

⁶⁰ See *Counselors Not Cops: Ending the Regular Presence of Law Enforcement in Schools*, DIGNITY IN SCHS., <https://dignityinschools.org/interactive/counselors-not-cops> [<https://perma.cc/R8ZB-FZ8Y>].

⁶¹ See *About the Campaign*, HOUSING NOT HANDCUFFS, <https://housingnothandcuffs.org> [<https://perma.cc/YP6J-XAU2>].

⁶² See WACQUANT, *supra* note 16, at 143; Bell, Beckett & Stuart, *supra* note 9, at 1295–99.

⁶³ See, e.g., Curran et al., *supra* note 9, at 52–53 (observing that when a School Resource Officer “takes on a more active role in formal education, the need for them to engage in discipline increases”); Lara-Millán, *supra* note 16, at 877 (describing frontline worker reliance on hospital police, beyond security and protection functions, to perform waiting room “thinning” of patients).

universities) helps us see that the impulse to adopt policing is so strong that it pervades parts of society outside the welfare state.⁶⁴

II. POLICING THE PUBLIC

My goal for Parts II and III of this Article is to provide a structure for analyzing policing within formal institutions. The two Parts provide this Article's six features across six institutional contexts — K–12 schools, emergency departments, colleges and universities, veterans health care, mass transit, and public housing. The six features are presented through sets of examples. To keep the project at a manageable length, this Article does not give each institutional domain or feature equal treatment but gives each enough attention so that later projects and other scholars can build on the analytic framework.

The kinds of features analyzed in Parts II (policing the public) and III (surveilling the public) bring to life the tension between what is typically viewed as care, on one hand, and carcerality, on the other. Sociologists and sociolegal scholars have observed that care and carcerality are enmeshed in ways that make decoupling police from formal

⁶⁴ For this Article, I am not including private security or private policing in formal institutions. For example, private K–12 schools and hospitals may hire their own police. *See, e.g.*, David Armstrong, *Cleveland Hospitals' Private Police "Border Patrol" Comes Under Scrutiny*, PROPUBLICA (Oct. 15, 2020, 5:00 AM), <https://www.propublica.org/article/cleveland-hospitals-private-police-border-patrol-comes-under-scrutiny> [<https://perma.cc/3XMW-AQPT>] (reporting on the "private police forces . . . run by the Cleveland Clinic, University Hospitals and University Circle Inc. [that] are armed and have the same powers as city police"); John Diedrich, Raquel Rutledge & Daphne Chen, *New Police Force in America: More Hospitals Are Creating Private Departments, Raising Concerns About Secrecy and Abuse*, MILWAUKEE J. SENTINEL (Jan. 13, 2021, 12:25 PM), <https://www.jsonline.com/in-depth/news/investigations/2020/12/15/hospital-police-have-power-officers-but-little-oversight/6362900002> [<https://perma.cc/AJM2-2KFE>] (reporting on the prevalence of police departments within local hospitals). The different power and authority for public and private policing warrant separate treatment of the important question: What happens if the public function of policing is handed over to private police forces? *See generally* Stephen Rushin, *The Regulation of Private Police*, 115 W. VA. L. REV. 159 (2012) (discussing differences in behaviors, purposes, and logics, and summarizing nuances of power, between private and public police); David A. Sklansky, *The Private Police*, 46 UCLA L. REV. 1165, 1187 (1999) (stating that "public police obviously have some well-defined powers that private security personnel lack" such as authority surrounding warrantless searches, compelling bystander assistance, and criminalizing arrest resistance); David Alan Sklansky, *Private Police and Democracy*, 43 AM. CRIM. L. REV. 89, 98 (2006) ("[T]he defining characteristic of private policing is its 'client driven mandate.'"). Private security is another form of policing operating within formal institutions in wealthier areas. *See, e.g.*, Yoav Gonen, *Public Funding of Private-School Security Grows by Millions*, THE CITY (Apr. 12, 2019, 4:10 AM), <https://www.thecity.nyc/education/2019/4/12/21211154/public-funding-of-private-school-security-grows-by-millions> [<https://perma.cc/C9DQ-5324>] (reporting on a New York City program that funds unarmed security guards at private schools); Joe Barrett, *In Chicago, Wealthy Neighborhoods Hire Their Own Private Police as Crime Rises*, WALL ST. J. (Apr. 29, 2022, 9:00 AM), <https://www.wsj.com/articles/in-chicago-wealthy-neighborhoods-hire-their-own-private-police-as-crime-rises-11651237201> [<https://perma.cc/VU7G-YSQT>] (reporting on Chicago neighborhoods who have hired off-duty police officers to patrol their streets).

institutions particularly hard.⁶⁵ Vulnerable persons must navigate institutional spaces and relationships through police. For race-class subjugated communities, police mediate access to and delivery of essential services. And the lines connecting policing and surveillance within institutions to police interactions on the street and in the home undermine any promises of a kinder, gentler police force under the authority of agency administrators. Instead, institutions use police and frontline workers to manage, regulate, control, and discipline. The six features described in this Part and the next are not meant to be segregable or neatly boxed in. They are intersecting and overlapping features that illustrate patterns across institutional contexts. Over time and with more study, the contours of these features may be contested and developed further.

Part II describes how policing the public expands beyond municipal street police, the police most typically associated with policing. Policing the public requires street-level bureaucrats and police to join forces, albeit for different reasons.⁶⁶ In section II.A., I show how “red flagging” by nonpolice can lead to future policing. I then describe in section II.B two ways police are involved with “boundary formation,” sometimes with the assistance of frontline workers. First, embedded police engage in “gray zone policing” — quality of life enforcement, which includes

⁶⁵ A central interest in sociological inquiry includes how aspects of control contribute to the ordering of society. For example, Wacquant argues that policing in the United States is especially tied to the neoliberal politics that dismantled the welfare state and public assistance programs. WACQUANT, *supra* note 16, at 6, 14–16, 290–91. Professor David Lyon observes that “surveillance — watching over — both enables and constrains, involves care and control.” DAVID LYON, *SURVEILLANCE SOCIETY: MONITORING EVERYDAY LIFE* 3 (2001). He points to the “sharp end” of surveillance as a mechanism of constraint and control but acknowledges “its capacity to reinforce social and economic divisions, to channel choices and to direct desires.” *Id.* at 4. I combine this juxtaposition of choices, desires (autonomy), and care with the insights of Professor Liat Ben-Moshe in disability justice. She points to “the use of ‘choice’ and ‘care’ as mechanisms to resist carceral enclosures and their potential closure.” LIAT BEN-MOSHE, *DECARCERATING DISABILITY: DEINSTITUTIONALIZATION AND PRISON ABOLITION* 190 (2020). More generally, Ben-Moshe views resistance against decarceration and deinstitutionalization in prison and disability institutions as embedded in the discourse of “rights/choice,” “care/work/labor,” and “innocence/safety.” *Id.* She tells the story of “post-1970s political economy [entanglement] with . . . economies of care.” *Id.* During this era, the framework of choice became a prominent neoliberal idea at the same time that public resources for “housing, welfare, and healthcare” were diminishing. *Id.* This resonates with my view — federal funding or match funding became available for housing authorities, schools, transit, and so forth, to focus on safety and security (policing) rather than addressing the underlying social inequalities or root causes. Thus, where individuals engage in choice-making with regard to safety and care, they are often constrained by regulations from the state and institutions. See generally JONATHAN SIMON, *GOVERNING THROUGH CRIME* (2010) (arguing institutions are increasingly governed through the lens of crime and criminal enforcement).

⁶⁶ See MICHAEL LIPSKY, *STREET-LEVEL BUREAUCRACY: DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICES* 3–4 (1983) (“The ways in which street-level bureaucrats deliver benefits and sanctions structure and delimit people’s lives and opportunities.” *Id.* at 4.); JAMES Q. WILSON, *VARIETIES OF POLICE BEHAVIOR: THE MANAGEMENT OF LAW & ORDER IN EIGHT COMMUNITIES* 140–226 (1968) (describing how, in some situations, police “act as if order maintenance rather than law enforcement were their principal function,” *id.* at 140).

policing the unhoused and disabled. Second, police also maintain a racial boundary between institutions and surrounding communities, sending messages of spatial belonging. Section II.C shows how embedded police integrate themselves into wellness checks performed at a person's home, including those initiated by other clientele, bureaucratic frontline workers, or administrators.

These features of transinstitutional policing show how policing is not confined to any single institution but aims to impose order on the public from within and across multiple institutions. Policing also emanates from the institutions outwards. Blurring the lines between institutions, the streets, and the home leads to increased policing for race-class subjugated communities. Even where initiatives stem from care motives and care institutions, they increase pathways to police interactions and violence.⁶⁷ Transinstitutional policing can further social alienation when clientele disconnect from a public institution or service providers following a carceral interaction (*vis-à-vis* police or other workers).

A. Red Flagging

The term “red flagging,” as I’m using it, is a process through which staff or police notice a person’s actions and create a note, list, flag, mark, or new record within administrative files or electronic records to track or monitor the person’s future behavior. Flagging can lead to criminal, traffic, or juvenile law charges, with all the attendant criminal consequences, or other noncriminal (but perhaps still punitive) sanctions. To illustrate, red flagging can lead to: a veteran patient’s citation for disruptive behavior or a flag in a medical record;⁶⁸ a college student’s arrest for a drug or alcohol violation or a referral to the dean of students;⁶⁹ a middle school or high school student’s ticket or school suspension;⁷⁰ an

⁶⁷ See *infra* section II.B.1, pp. 840–46. Institutions of care can also deprive resources. See Megan Comfort et al., *How Institutions Deprive: Ethnography, Social Work, and Interventionist Ethics Among the Hypermarginalized*, RSF: THE RUSSELL SAGE FOUND. J. SOC. SCIS., Nov. 2015, at 100, 115 (concluding study subjects “navigated the maze of underfunded, rigidly bureaucratized institutions that served more as gatekeepers withholding the protections of social integration than as conduits to those protections”).

⁶⁸ Patel, *supra* note 59, at 843–44 (“First, the Committees may enter a red flag — which appears in large, all-caps, red letters — into a patients’ [sic] electronic medical records to alert all staff at any Veterans Affairs (VA) facility around the country that a patient engaged in or is at risk of engaging in disruptive behavior. . . . Third, the [VA police] may cite or arrest a patient for criminal charges or for a ‘disturbance’ . . .”).

⁶⁹ See UNIV. OF PA. POLICE DEP’T, DIRECTIVE ELEVEN, LAW ENFORCEMENT AGENCY ROLE 3 (2021), <https://live-upte.pantheonsite.io/files/2022/03/UPPD-Directive-11.pdf> [<https://perma.cc/3A7W-VKZV>] (“[O]fficers can request that student offenders be referred to the University’s Office of Student Conduct in lieu of (or in addition to) criminal prosecution.”).

⁷⁰ See Jennifer Smith Richards et al., *The Price Kids Pay: Schools and Police Punish Students with Costly Tickets for Misbehavior*, CHI. TRIB. (Apr. 28, 2022, 4:00 AM), <https://www.chicagotribune.com/investigations/ct-illinois-schools-discipline-tickets-fines-price-kids-pay-20221013-tpkekqt3sfcadhmczbl7xadcva-htlmstory.html> [<https://perma.cc/W6AE-G2ET>] (reporting that at

arrest with eviction consequences or a warning for a lease violation;⁷¹ and so forth.

I am drawing from my previous work on the Veterans Health Administration's (VHA) behavioral record flags, also known as "red flags," to show that red flagging is a more generalizable phenomenon.⁷² The VHA permits hospital staff to place an electronic flag — which appear as bold red letters on the top of the record page — when a patient has disrupted hospital operations.⁷³ A committee (which includes police⁷⁴) deliberates over the disruptive incidents and enters red flags — which appears as large, all-caps, red letters — into patients' electronic medical records.⁷⁵ The flag is then shared across the VHA health system around the country to communicate that a patient has been or could be disruptive.⁷⁶ The only comprehensive data available on these types of record flags is from a 2018 Office of Inspector General report that covers 889 individual patient records.⁷⁷ The data shows swearing at facility staff or using racial slurs were the most common bases for red flagging

one Illinois high school, "10 school security workers patrol the hallways and stand guard outside the bathrooms. If they spot vaping devices, fights or other trouble, they alert school administrators, who decide whether to share the information with the school resource officer"; *id.* ("It's all on what the school wants to do," said [city of] Harvard Deputy Chief Tyson Bauman. "The school official has to be the person who says, "Yes, issue a ticket.""); Neil Bedi & Kathleen McGrory, *Pasco's Sheriff Uses Grades and Abuse Histories to Label Schoolchildren Potential Criminals. The Kids and Their Parents Don't Know*, TAMPA BAY TIMES (Nov. 19, 2020), <https://projects.tampabay.com/projects/2020/investigations/police-pasco-sheriff-targeted/school-data> [<https://perma.cc/X6LN-77ZQ>] (reporting on the use of in-school discipline records by local police).

⁷¹ Hassan Kanu, "Crime-Free" Housing Law Settlement with U.S. Justice Dept Puts Cities on Notice, REUTERS (Dec. 19, 2022, 6:36 PM), <https://www.reuters.com/legal/government/crime-free-housing-law-settlement-with-us-justice-dept-puts-cities-notice-2022-12-19> [<https://perma.cc/S583-NS7P>] ("Crime-free housing ordinances encourage or require private landlords to reject or evict tenants simply for having some contact with the justice system — including people merely suspected of undefined 'criminal activity.'").

⁷² See Patel, *supra* note 59, at 843–44; *cf.* VETERANS HEALTH ADMIN., U.S. DEP'T OF VETERANS AFFS., DIRECTIVE 2010-053, PATIENT RECORD FLAGS 1 (2010) (describing the VHA's protocols for the use of behavioral record flags).

⁷³ See Patel, *supra* note 59, at 843.

⁷⁴ See U.S. DEP'T OF VETERANS AFFS., PATIENT RECORD FLAGS (PRF) USER GUIDE 50, 61, 70 (2019); U.S. DEP'T OF VETERANS AFFS., IMPLEMENTING MULTIDISCIPLINARY BEHAVIORAL THREAT ASSESSMENT AND MANAGEMENT PRACTICE IN HEALTH CARE: DISRUPTIVE BEHAVIOR COMMITTEE (DBC) GUIDEBOOK 19, 69 (2021) [hereinafter DBC GUIDEBOOK].

⁷⁵ See U.S. DEP'T OF VETERANS AFFS., COMPUTERIZED PATIENT RECORD SYSTEM (CPRS) USER GUIDE: GUI VERSION 62–75 (2023), [https://www.va.gov/vdl/documents/Clinical/Comp_Patient_Recrd_Sys_\(CPRS\)/cprsguim.pdf](https://www.va.gov/vdl/documents/Clinical/Comp_Patient_Recrd_Sys_(CPRS)/cprsguim.pdf) [<https://perma.cc/3Q67-3NYR>] (describing the Patient Record Flag interface and providing a screenshot of its appearance).

⁷⁶ See sources cited *supra* note 72; DBC GUIDEBOOK, *supra* note 74, at 69; see also Patel, *supra* note 59, at 843.

⁷⁷ Patel, *supra* note 59, at 849; OFF. OF INSPECTOR GEN., U.S. DEP'T OF VETERANS AFFS., REPORT NO. 11-02585-129, HEALTHCARE INSPECTION: MANAGEMENT OF DISRUPTIVE PATIENT BEHAVIOR AT VA MEDICAL FACILITIES 9 & tbl.1 (2013).

veteran patients.⁷⁸ In response, scholars raised concerns that patients with disabilities, particularly traumatic brain injuries or complex mental illnesses that might lead to paranoia and agitation with verbal reactions, are more likely to be flagged.⁷⁹

As is the case with the VHA, policies that permit red flagging in other social services or education settings are sometimes initiated for care or protection of clientele or workers but carry disciplinary, regulatory, and punitive consequences for race-class subjugated persons. Although red-flagging policies are intended as a less punitive alternative to immediate police responses,⁸⁰ when bureaucratic workers use these flags, they expose their clientele to scrutiny, monitoring, or noncriminal sanction. Police may use red flagging to support involuntary commitment or subsequent arrests and citations.⁸¹ The bureaucratic institutions examined in this Article red flag internal records for similar purposes as marking criminal records in sociological literatures.⁸² Policies or procedures within these institutions extend discretion to workers, elasticizing who is marked and why they are marked,⁸³ all while affording police a role in the determinations. Importantly, I am not making an empirical claim. Instead, my argument is that bureaucratic leaders and lawmakers typically focus on the advantages of such a system. If we do not take into account the linkages between and across systems, it may be difficult to comprehensively understand the drawbacks of red flags.

Red flagging is a form of mass criminalization and leads to surveillance; it also expresses carceral logics within bureaucratic institutions. It provides an opportunity for police *and* bureaucratic workers to exercise discretion on whether to wield formal charges or other sanctions. To consider how red flagging facilitates mass criminalization and

⁷⁸ Over fifty-six percent of referrals were for a “[v]erbal aggression or verbal attack,” which includes “screaming or swearing at facility staff or using racial or ethnic slurs.” OFF. OF INSPECTOR GEN., *supra* note 77, at 9 & tbl.1; *see also* Linda E. Weinberger et al., *Balancing Safety Against Obstruction to Health Care Access: An Examination of Behavioral Flags in the VA Health Care System*, 5 J. THREAT ASSESSMENT & MGMT. 35, 35–36 (2018).

⁷⁹ *See* Weinberger et al., *supra* note 78, at 38.

⁸⁰ *See* KOHLER-HAUSMANN, *supra* note 23, at 144–45; Responding to Disruptive Patients, 75 Fed. Reg. 69881, 69881 (Nov. 16, 2020) (“VA has determined that arrest is generally not an appropriate remedy in a situation where the Department must balance the rights and needs of a disruptive patient against the need to protect other patients, guests, and staff.”).

⁸¹ *See* JOSH SEIM, BANDAGE, SORT, AND HUSTLE: AMBULANCE CREWS ON THE FRONT LINES OF URBAN SUFFERING 119–20 (2020) (“With a powerful toolkit of protocols at their disposal, law enforcement in the county can strategically ‘cut paperwork’ that forces someone to undergo mental health evaluation or simply claim that a person is so drunk or high that they need medical attention.” *Id.* at 119.).

⁸² For discussion, *see* Eisha Jain, *The Mark of Policing: Race and Criminal Records*, 73 STAN. L. REV. ONLINE 162, 174–75 (2021); DEVAH PAGER, MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION 154 (2007); and *infra* note 162 and accompanying text.

⁸³ *See* Patel, *supra* note 59, at 842–46.

expresses carceral features of an institution, we can take for example Mr. Nolan Lewis. He is a veteran adjudicated to be one hundred percent disabled and unable to work due to trauma experienced during his combat service.⁸⁴ In 2014, he made several attempts to refill his mental health medication prescription by calling a Veterans Affairs (VA) pharmacy.⁸⁵ By his third attempt, Mr. Lewis was frustrated with his provider, the VA, and the pharmacy;⁸⁶ but finally, a pharmacist indicated she would have his medications ready the following day.⁸⁷ Unbeknownst to Mr. Lewis, one of the pharmacists he spoke to had noticed a behavioral “flag” in his electronic medical records from 2010.⁸⁸ This flag was outdated, however, and should have been removed in 2012.⁸⁹ According to Mr. Lewis’s complaint filed in the Central District of California, the pharmacist nevertheless reported, falsely, that he had threatened his provider-physician,⁹⁰ leading to a request for an updated flag.⁹¹

The next day, Mr. Lewis picked up his prescription.⁹² VA police officers and a special agent visited him a few hours after he returned home.⁹³ They obtained consent to enter and search for weapons.⁹⁴ According to Mr. Lewis, during the interrogation that ensued, they “lunged at him” violently, threatened to take him somewhere to physically assault him, and called Mr. Lewis a “Vietnam baby killer[,],” “pill head,” and “[f]-ing liar.”⁹⁵ The next day, the VA officers returned with

⁸⁴ Order Granting in Part and Denying in Part Motion for Partial Summary Judgment at 2, *Lewis v. Mossbrooks*, No. 15-08756 (C.D. Cal. Jan. 4, 2021).

⁸⁵ *Id.* at 2–3.

⁸⁶ *Id.* at 3.

⁸⁷ *Id.*

⁸⁸ Evidence in Support of Defendants’ Motion for Summary Judgment at 91, *Lewis v. Mossbrooks*, No. 15-08756 (C.D. Cal. Oct. 26, 2017), ECF No. 115-2 [hereinafter Evidence (1 of 2)] (exhibit 39), *aff’d in part, rev’d in part*, 788 F. App’x 455 (9th Cir. 2019). The fact that the 2010 flag was viewed by the pharmacist was not in dispute.

⁸⁹ *Lewis*, 2017 WL 11558251, at *1; see VETERANS HEALTH ADMIN., *supra* note 72, at 4 (requiring review of behavioral record flags every two years). Removing old flags is important because they carry bias and stigma. See Patel, *supra* note 59, at 858–59.

⁹⁰ In dispute was the extent of the threat (“slap” versus “shoot”), Evidence (1 of 2), *supra* note 88, at 101–02, and whether Mr. Lewis had actual intent to carry out the threat. See *Lewis*, 2017 WL 11558281, at *2.

⁹¹ Evidence (1 of 2), *supra* note 88, at 5 (listing an email from the pharmacist requesting police escort to accompany Mr. Lewis).

⁹² *Id.* at 107 (noting testimony from pharmacist confirming Mr. Lewis returned the next day).

⁹³ *Lewis*, 2017 WL 11558281, at *2.

⁹⁴ Evidence (1 of 2), *supra* note 88, at 2 (“[Mr. Lewis] told the Officers he did not have a gun or anything to hide and permitted the Officers to search his residence.”). Mr. Lewis’s version of the facts includes statements that he felt “intimidated” by the presence of officers on his porch. Declaration of Nolan Lewis in Support of Plaintiff’s Opposition to Defendant’s Motion for Summary Judgment ¶ 22, *Lewis*, No. 15-08756. He felt he had no choice but to allow them to enter and search. See *id.* ¶¶ 25, 34.

⁹⁵ *Lewis*, 2017 WL 11558251, at *2 (quoting Complaint for Damages ¶ 21, *Lewis*, No. 15-08756, 2017 WL 11558282).

multiple L.A. County Sheriff's Department officers.⁹⁶ Mr. Lewis was aggressively arrested, driven to multiple locations around the county,⁹⁷ and eventually charged with making "[c]riminal [t]hreats" against the pharmacist and physician.⁹⁸

In support of Mr. Lewis, his VA psychiatrist wrote a letter to the court stating it was "highly improbable" that Mr. Lewis "had made specific statements to threaten the lives of others, especially VA employees" and in the psychiatrist's "professional opinion," "Mr. Lewis did not commit the crime he [was] being accused of."⁹⁹ The court eventually dismissed the charges,¹⁰⁰ but these events exacerbated Mr. Lewis's post-traumatic stress disorder (PTSD) symptoms¹⁰¹ and weakened his faith in the VA as a location for veteran care.¹⁰²

Mr. Lewis's story illustrates a few larger points. First, it shows how policing inside the institution connects to other spaces and punitive methods. The red flag follows the veteran from health facility to health facility, and as I will argue later, grants embedded and local police entry into patients' homes.¹⁰³ Second, it shows how the subcriminal disciplinary and tracking methods within institutions operate as flags for future police interactions or other potentially punitive treatment of clientele by workers. In the VHA's red-flagging systems, a patient's flag based on encounters from months or years prior remains relevant to their interactions with health care providers in the future. Even in a system that worked appropriately — using flags sparingly and with appropriate procedural protections as a way of warning providers that a patient may need particularized care due to prior behavioral concerns or violence — there would be reasons to be skeptical of their utility. I have argued elsewhere that flags create a stigma and bias associated with criminality and violence.¹⁰⁴ In this example, the physician and pharmacist testified to the influence of this flag on their interpretation of Mr. Lewis's actions: the physician stated that he "feared" for his "well-being . . . in part, due to [Mr. Lewis's] behavioral flag" from four years prior.¹⁰⁵ Third, it

⁹⁶ Evidence in Support of Defendants' Motion for Summary Judgment ¶ 22, *Lewis*, No. 15-cv-08756, ECF No. 115-1 [hereinafter Evidence (2 of 2)] (declaration of Special Agent Chad Joy).

⁹⁷ *Id.* ¶¶ 24–26.

⁹⁸ *Lewis*, 2017 WL 11558281, at *2.

⁹⁹ Evidence (1 of 2), *supra* note 88, at 136–37.

¹⁰⁰ *Lewis*, 2017 WL 11558281, at *2.

¹⁰¹ See Plaintiff's Proposed Findings of Fact and Conclusions of Law ¶¶ 78–81, *Lewis*, No. 15-cv-08756.

¹⁰² *Id.* ¶ 84.

¹⁰³ See *infra* section II.C, pp. 851–61.

¹⁰⁴ See Patel, *supra* note 59, at 858–59.

¹⁰⁵ Evidence (2 of 2), *supra* note 96, at 20–21 (declaration of Farrukh Merchant). The physician also requested that the flag stay on Mr. Lewis's patient record "for at least 5 years if not longer." Evidence (1 of 2), *supra* note 88, at 119. The flag led the pharmacist to state, "It allowed me to know that this patient had made threats before. So I ha[d] to approach him differently." *Id.* at 103.

shows how a patient's acute mental health circumstances may play a role in the events leading to the record flag in the first instance.¹⁰⁶ The current VA policies don't account for distress, changed circumstances, or rehabilitation,¹⁰⁷ and current procedural safeguards are not adhered to in a manner that can account for the prevalence of serious mental illness and homelessness.¹⁰⁸ Without fixed addresses, homeless veteran patients may never receive actual or constructive notice of a flag, making it unlikely they will correctly or timely contest flags. For example, where regulations require the patient to mail an appeal to a specific official, when another official receives the written request or the correct person receives an oral request for an appeal, a federal court upheld dismissal of an appeal even though the patient's disability led to difficulty navigating the appeal's rules.¹⁰⁹ Finally, it shows that the picture is complex. Employers cannot and should not ignore serious threats, and workers should not endure fear or insecurity in the workplace. But responses must consider the well-being of both workers and clientele, and institutional policing too often disregards the latter for the sake of the former.

In the housing context, red flagging takes the form of house rules and trespasser lists. Lease agreements with housing authorities and private landlords¹¹⁰ require tenants to comply with certain house rules, which local police may enforce through agreements with housing authorities and private building managers.¹¹¹ The New York City Housing Authority's house rules are so broad that they duplicate provisions of criminal law (for example, no trespassing) and also cover general upkeep "such as waste disposal, moving permits, TV antenna

The physician's reaction to prolonging an improperly maintained flag is interesting. Even though the VHA had provided health care, housing, and apparent stability for Mr. Lewis, his prior act left a taint in his administrative record.

¹⁰⁶ Patel, *supra* note 59, at 838–39, 850.

¹⁰⁷ *Id.* at 838–39, 874. Further research is necessary to understand whether, in practice, medical providers or certain facilities actually take mental disabilities into account.

¹⁰⁸ *Id.* at 853 & n.214 (detailing VA regulations related to due process notice requirements).

¹⁰⁹ See, e.g., *Veasy v. United States*, No. CV 16-4151, 2017 WL 528322, at *2–4 (E.D. Pa. Feb. 9, 2017) (dismissing for failure to exhaust where veteran patient wrote "several letters to the [VHA] objecting to the police escort requirement," *id.* at *2, but they were not addressed to the Chief of Staff and were not sent within thirty days).

¹¹⁰ Professor Monica Bell's examination of mechanisms through which police entrench residential segregation includes police management and control over different neighborhoods. See Bell, *supra* note 14, at 687–88, 688 n.177.

¹¹¹ See, e.g., Complaint ¶¶ 1, 7, 32–33, *Ligon v. City of New York*, 925 F. Supp. 2d 478 (S.D.N.Y. 2013) (No. 12 Civ. 2274) (alleging that the NYPD's "Operation Clean Halls" program "allows police officers to patrol inside and around thousands of private residential apartment buildings across the City . . . result[ing] in thousands of illegal stops, searches, summonses, and arrests of those buildings' residents and their invited guests without cause," *id.* ¶ 1); Katherine Beckett & Steve Herbert, *Penal Boundaries: Banishment and the Expansion of Punishment*, 35 LAW & SOC. INQUIRY 1, 7 (2010) ("In Seattle, police officers may . . . issue 'trespass admonishments' that prohibit a person from being on a certain property or group of properties for an extended period of time, typically one year. Officers are granted this authority via a contract with property owners.").

installation, and barbecue permits.”¹¹² Such rules create the opportunity for housing-authority staff, private security, and other officials to figuratively flag particular tenants for scrutiny and monitoring, always with the ability to ratchet up the consequence of rule violation or engage the institution’s police. In addition to house rules, housing authorities across the country maintain trespass logs or lists to “document those who have been issued trespassing citations.”¹¹³ These unverified lists then allow housing authority staff to engage their police, or local police, to stop or arrest a visitor or resident merely because their name appears on the list.¹¹⁴ Professor Alexis Karteron documents such practices in public housing and what she calls “patrolled housing”¹¹⁵ in Maryland, Massachusetts, New Jersey, Ohio, Virginia, and Washington.¹¹⁶ These trespass lists can justify increasing housing police in and around low-income housing.¹¹⁷

Tenants with disabilities, particularly mental disabilities, or tenants who act in a manner out of step with white, middle-class, heteronormative ideas of behavior, are more likely to find themselves flagged by the housing authority or landlord.¹¹⁸ Misunderstandings or small disputes can quickly lead to lease violations or placement on problem lists. As a consequence of the lease violations or neighbors’ extra scrutiny, police may intervene, leading to criminal or regulatory charges.¹¹⁹ Although

¹¹² Alexis Karteron, *When Stop and Frisk Comes Home: Policing Public and Patrolled Housing*, 69 CASE W. RES. L. REV. 669, 716 (2019) (citing Memorandum of Understanding Between the New York City Housing Authority and the City of New York on Merger of the New York City Housing Authority Police Department and the New York City Police Department at 8–9, *Davis v. City of New York*, 959 F. Supp. 2d 324 (S.D.N.Y. 2013) (No. 10-cv-00699), ECF No. 176-1); see New York City Housing Authority (NYCHA): Highlights of House Rules, Lease Terms and Policy at 2–3, *Davis*, 959 F. Supp. 2d 324 (No. 10-cv-00699).

¹¹³ Karteron, *supra* note 112, at 684.

¹¹⁴ *Id.* at 684–85.

¹¹⁵ “Patrolled housing” refers to “multi-unit dwellings subject to regular patrol by police or other law enforcement officers, typically as a result of agreement between the landlord and a local law enforcement agency.” *Id.* at 671 n.3.

¹¹⁶ *Id.* at 685.

¹¹⁷ See, e.g., Editorial, *Keep Housing Police on Important Duty*, INDIANAPOLIS STAR, Nov. 8, 2004, at A10 (advocating for the continued funding of “housing police” to monitor public housing residents and Section 8 tenants); Karteron, *supra* note 112, at 680, 686.

¹¹⁸ Cf. Patel, *supra* note 59, at 850.

¹¹⁹ See Alisha Jarwala & Sejal Singh, Note, *When Disability Is a “Nuisance”: How Chronic Nuisance Ordinances Push Residents with Disabilities Out of Their Homes*, 54 HARV. C.R.-C.L. L. REV. 875, 884 (2019) (“Because nuisance ordinances generally penalize residents for 911 calls, no matter the reason for the call, residents may be cited — or even evicted — when they call for help with a mental health crisis.”); Joseph Mead et al., *Treating Neighbors as Nuisances: Troubling Applications of Criminal Activity Nuisance Ordinances*, 66 CLEV. ST. L. REV. ET CETERA 1, 8 (2018) (collecting “examples of nuisance letters sent in response to incidents of domestic violence” to demonstrate how criminal activity nuisance ordinances “present survivors of domestic violence with the impossible choice between seeking help from law enforcement and keeping their home”); cf. Deborah Archer, *Jim Crow in the 21st Century: Crime Free Housing Ordinances, Racial Segregation, and Mass Criminalization*, 19 OHIO ST. J. CRIM. L. 173, 178 (2021) (describing how crime-free housing ordinances can lead to criminal records due to increased police contacts).

disability law may protect such tenants, reasonable accommodations processes are hard for residents to navigate¹²⁰ and improperly implemented.¹²¹ Housing authorities sometimes “create procedural barriers” to obtaining necessary accommodations, including requiring medical documentation.¹²² Landlords may ask tenants to move to different units rather than modify the tenant’s occupied unit.¹²³ If available units are a substantial distance away, the tenant may be forced to choose between remaining in housing that cannot meet their disability needs and moving away from “family, communities, and services.”¹²⁴

One concrete example highlighted in the work of Professor Priscilla Ocen is connected to Section 8 housing, though the problem of policing public housing is not limited to Section 8 voucher holders.¹²⁵ After experiencing an increase in Black Section 8 voucher holders, the city of Antioch, California, solicited complaints against Section 8 tenants to submit to both the police and the local housing authority.¹²⁶ The California cities of Lancaster and Palmdale even worked with the local housing authority “to hire and pay for dedicated fraud investigators,” all of whom were former sheriff’s deputies who conducted their housing authority business with sheriff’s department email addresses and used the sheriff’s station as office space.¹²⁷ In Lancaster, which implemented a complaints process similar to that of Antioch,¹²⁸ most of the

¹²⁰ See Ebonie Megibow & Corianne Payton Scally, *Three Obstacles Federally Assisted Housing Programs Need to Overcome to Better Serve Residents with Disabilities*, URBAN INST.: HOUS. MATTERS (Mar. 16, 2022), <https://housingmatters.urban.org/articles/three-obstacles-federally-assisted-housing-programs-need-overcome-better-serve-residents> [https://perma.cc/DF63-UPBY].

¹²¹ See OFF. OF INSPECTOR GEN., HUD’S OFFICE OF PUBLIC HOUSING AND VOUCHER PROGRAMS, U.S. DEP’T OF HOUS. & URB. DEV., AUDIT REP. NO. 2022-BO-0001, REQUESTS FOR REASONABLE ACCOMMODATION IN PUBLIC HOUSING REPORT 8 (2022), <https://www.hudoig.gov/sites/default/files/2022-02/2022-BO-0001.pdf> [https://perma.cc/UD7V-RR2L] (“[S]ome [public housing agencies] may not be properly implementing existing requirements and may not understand all their responsibilities related to requests for reasonable accommodation.”).

¹²² Megibow & Scally, *supra* note 120.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ For example, in Buffalo, New York, “a local Black Lives Matter group filed a complaint . . . accus[ing] the Buffalo Police Department’s housing unit of engaging in unconstitutional . . . trespass ‘sweeps’ and checkpoints . . . in and around public housing complexes.” Karteron, *supra* note 112, at 686 (citing ANJANA MALHOTRA, UNCHECKED AUTHORITY WITHOUT ACCOUNTABILITY IN BUFFALO, NEW YORK: THE BUFFALO POLICE DEPARTMENT’S WIDESPREAD PATTERN AND PRACTICE OF UNCONSTITUTIONAL DISCRIMINATORY POLICING, AND THE HUMAN, SOCIAL AND ECONOMIC COSTS 15–16 (2017)).

¹²⁶ Ocen, *supra* note 17, at 1576.

¹²⁷ Letter from Thomas E. Perez, Assistant Att’y Gen., to Leroy D. Baca, Sheriff, 19 (June 28, 2013), https://www.justice.gov/sites/default/files/crt/legacy/2013/06/28/antelope_findings_6-28-13.pdf [https://perma.cc/W59G-U44A].

¹²⁸ Ocen, *supra* note 17, at 1574–75.

complaints were noncriminal in nature.¹²⁹ Many of the complaints boiled down to everyday activities in the streets: having dogs that barked, playing basketball, and playing music.¹³⁰ The complaint system treated non-Black voucher holders differently; they were usually ignored.¹³¹ As a result of the complaints, many Black voucher holders lost their vouchers or were further policed and penalized, as police entered their homes under pretext of welfare checks.¹³² According to Professor Ocen, the flagging of voucher holders was racialized: “[P]olice units [in cities like Lancaster and Palmdale] focused on surveilling, regulating, and intimidating Black Section 8 voucher holders.”¹³³ Some sweeps with sheriff’s deputies engaged welfare fraud investigators, and other times, personnel from the Department of Children and Family Services or the Probation Department or code enforcers.¹³⁴ This type of “multiagency” policing strategy is discussed more in the networked information section.¹³⁵

Children in K–12 schools are also subjected to noncriminal red flagging. Numerous states criminalize the offense of disrupting school activities, including disruptions surrounding, but outside of, the school.¹³⁶ Consider a student who kicks a trash can when frustrated over a bad grade on a recent test. Under disruptive behavior laws, the teacher can engage an SRO to make a formal juvenile delinquency arrest.¹³⁷ Alternatively, the teacher can determine school discipline is more appropriate for the student, or if the action is connected to other concerns related to the child’s known depression, the teacher may suggest an accommodation. School police sometimes determine — or are consulted

¹²⁹ *Id.* at 1575; *see also* Complaint ¶¶ 56–59, *Cnty. Action League v. City of Lancaster*, No. CV11-04817 (C.D. Cal. Feb. 1, 2012). One resident in Lancaster even had a police officer “visit[] her for a noise complaint while she was moving into her current rental. She asked the officer, ‘How am I supposed to have loud music playing when I don’t even have any furniture or anything?’” Rahim Kurwa, *Deconcentration Without Integration: Examining the Social Outcomes of Housing Choice Voucher Movement in Los Angeles County*, 14 CITY & CMTY. 364, 380–81 (2015).

¹³⁰ Ocen, *supra* note 17, at 1575.

¹³¹ *Id.* at 1577.

¹³² *See id.* at 1577–79; Complaint, *supra* note 129, ¶¶ 37–38, 69.

¹³³ Ocen, *supra* note 17, at 1577; *see also* Complaint, *supra* note 129, ¶¶ 28–29.

¹³⁴ Ocen, *supra* note 17, at 1577.

¹³⁵ *Id.*; *see infra* Part III.A, pp. 862–68.

¹³⁶ *See, e.g.*, ARIZ. REV. STAT. ANN. § 13-2911 (2009) (defining crime of “[i]nterference with or disruption of an educational institution”); CAL. PENAL CODE § 415.5 (West 2010) (defining crime of “[d]isturbance of [any] peace of school, community college, university[,] or state university”); FLA. STAT. ANN. § 871.01 (West 2000) (defining crime of “[d]isturbing schools and religious and other assemblies”); UTAH CODE ANN. § 76-8-710 (LexisNexis 2009) (criminalizing “[d]isruption of activities in or near school building”).

¹³⁷ Susan Ferriss, *UPDATE: How Kicking a Trash Can Became Criminal for a 6th Grader*, THE WORLD (Sept. 3, 2015, 11:00 AM), <https://theworld.org/stories/2015-04-10/how-kicking-trash-can-became-criminal-6th-grader> [<https://perma.cc/WUG4-3SZV>].

by administrators who determine — whether a child should receive an arrest, school discipline, or disability accommodations.¹³⁸

Professor Jyoti Nanda provides an important account of in-school probation programs that operate around the country to surveil and monitor children even without suspicion of criminal activity.¹³⁹ I categorize this pre-court intervention as red flagging. This probationary system places children generally considered at risk of truancy or future criminal activity into a supposed voluntary monitoring program within the school.¹⁴⁰ While definitions of and standards for at-risk vary, the Los Angeles Probation Authority has defined “at-risk youth” as “youth who have not entered the probation system but who live or attend school in areas of high crime or who have ‘other factors’ that potentially predispose them to participat[e] in criminal activities.”¹⁴¹ This system embeds probation officers in schools, allowing them to become the eyes and ears of the police and juvenile courts without any violation of law.

Riverside County in California operates an in-school probation system for an even broader category of children than Los Angeles.¹⁴² From 2001 to 2019, Riverside County placed students on probation with the County’s Probation Department for alleged school misconduct — not violations of juvenile law — under its Youth Accountability Team (YAT) program.¹⁴³ Students on probation could be subject to weekly check-ins,

¹³⁸ See Neal Morton, *If Schools Don’t Overhaul Discipline, “Teachers Will Still Be Calling the Police on Our Black Students,”* HECHINGER REPORT (Feb. 1, 2021), <https://hechingerreport.org/if-schools-dont-overhaul-discipline-teachers-will-still-be-calling-the-police-on-our-black-students-2> [<https://perma.cc/ZQZ3-672A>]; Alexa Griffey, *This Is Home: School Resource Officers Work to Build Positive Relationships with Students*, WTAP (Sept. 9, 2022, 7:41 PM), <https://www.wtap.com/2022/09/09/this-is-home-school-resource-officers-work-build-positive-relationships-with-students> [<https://perma.cc/SX7P-T3PH>] (describing how SROs “walk the halls, answer safety questions, [and] handle disciplinary actions and criminal investigations”); Benjamin W. Fisher & Emily A. Hennessy, *School Resource Officers and Exclusionary Discipline in U.S. High Schools: A Systematic Review and Meta-Analysis*, 1 ADOLESCENT RSCH. REV. 217, 218 (2016).

¹³⁹ See generally Jyoti Nanda, *Web of Incarceration: School-Based Probation*, 21 NEV. L.J. 1117 (2021).

¹⁴⁰ *Id.* at 1129–31.

¹⁴¹ *Id.* at 1133 (quoting TERRY FAIN, SUSAN TURNER & MAURI MATSUDA, RAND INST., LOS ANGELES COUNTY JUVENILE JUSTICE CRIME PREVENTION ACT: FISCAL YEAR 2014–2015 REPORT (2016), https://www.rand.org/pubs/research_reports/RR1458.html [<https://perma.cc/3H7P-5NQF>]); see CAL. WELF. & INST. CODE § 236 (West 2022) (“[P]robation departments may engage in activities designed to prevent juvenile delinquency. These activities include rendering direct and indirect services to persons in the community. Probation departments shall not be limited to providing services only to those persons on probation being supervised under Section 330 or 654, but may provide services to any juveniles in the community.”).

¹⁴² See Nanda, *supra* note 139, at 1130, 1134 (“[Y]outh with two or more problems in the following areas are [considered to be] at a higher risk: family dysfunction (problems of parental monitoring of child behavior or high conflict between youth and parent), school problems (truancy, misbehavior, or poor academic performance), and delinquent behavior (gang involvement, substance abuse or involvement in fights).” *Id.* at 1134.).

¹⁴³ See Complaint for Declaratory and Injunctive Relief, Nominal Damages ¶¶ 1, 32, Sigma Beta Xi, Inc. v. County of Riverside, No. 18-cv-01399 (C.D. Cal. July 1, 2018); Press Release, ACLU of

curfews, community service, or home visits.¹⁴⁴ They signed waivers to permit searches of their homes and were forced to submit to drug tests.¹⁴⁵ Any violation of the terms of the so-called informal probation was grounds to refer a student to the District Attorney's Office for prosecution.¹⁴⁶ In fact, as reported in *Education Week*, "nearly 13,000 students in Riverside County's Youth Accountability Team program from 2005 to 2016 signed a contract allowing campus-based parole officers to conduct random drug tests or search them or their home at any time — including during tests and classes."¹⁴⁷ This red flagging through in-school probation ramps up surveillance and monitoring of students beyond the schoolhouse to their homes, and will likely therefore lead to future interactions with school police.¹⁴⁸

While programs like YAT are initiated with the public-facing justification of supporting vulnerable children, they do not account for the structural barriers to educational resources and opportunities in the lives of race-class subjugated communities, nor do they account for the disproportionate burden of school discipline on disabled and minority children.¹⁴⁹ Programs like YAT use criminal enforcement, and police personnel, to intervene where social services have been proven effective. Prior to the advent of school policing, teachers and principals often played the role of managing classroom behavior.¹⁵⁰ Moreover, YAT and similar programs operate around assumptions about race, criminality, and violence. U.S. Department of Education data shows Native American, Black, and Hispanic students are more likely to miss three or more weeks of school than white students.¹⁵¹ Students with disabilities are fifty percent more likely to have chronic absences than students without disabilities¹⁵² and face disproportionate punishment in school

S. Cal., Historic Settlement over Abuses of Riverside County Youth Probation Program (July 24, 2019), <https://www.aclusocal.org/en/press-releases/historic-settlement-over-abuses-riverside-county-youth-probation-program> [<https://perma.cc/CS7E-QRL9>].

¹⁴⁴ Complaint for Declaratory and Injunctive Relief, *supra* note 143, ¶ 37.

¹⁴⁵ *Id.* ¶ 7.

¹⁴⁶ *Id.* ¶ 37.

¹⁴⁷ Sarah D. Sparks, *California Lawsuit Offers Cautionary Tale on School-Based Probation Programs*, EDUC. WK. (July 25, 2019), <https://www.edweek.org/leadership/california-lawsuit-offers-cautionary-tale-on-school-based-probation-programs/2019/07> [<https://perma.cc/8EBA-VV8F>]; see also Complaint for Declaratory and Injunctive Relief, Nominal Damages, *supra* note 143, ¶¶ 4, 7–8. Such programs connecting policing inside and outside of schools are not new. See generally HINTON, *supra* note 17, at 236–42 (chronicling examples of school officials adopting police responses to Black dissent).

¹⁴⁸ See Libby Nelson & Dara Lind, *The School-to-Prison Pipeline, Explained*, VOX (Oct. 27, 2015, 11:05 AM), <https://www.vox.com/2015/2/24/8101289/school-discipline-race> [<https://perma.cc/SB7P-M467>].

¹⁴⁹ See Nanda, *supra* note 139, at 1139–43; Jyoti Nanda, *The Construction and Criminalization of Disability in School Incarceration*, 9 COLUM. J. RACE & L. 265, 291–96 (2019).

¹⁵⁰ See *infra* section III.B, pp. 868–74.

¹⁵¹ *Chronic Absenteeism in the Nation's Schools*, U.S. DEP'T EDUC. (Jan. 2019), <https://www2.ed.gov/datastory/chronicabsenteeism.html> [<https://perma.cc/5RXW-AGGD>].

¹⁵² See *id.*

disciplinary proceedings.¹⁵³ Black students are also disciplined more frequently, and more harshly, for the same disciplinary or disruptive conduct as white students.¹⁵⁴

Meanwhile, more than 4,000 police agencies are currently operating on the nation's college campuses,¹⁵⁵ and ninety-five percent of four-year institutions with 2,500 or more students operate their own campus police force.¹⁵⁶ Sixty-eight percent have academy-trained police officers, who are authorized to carry firearms and have full arrest power.¹⁵⁷ These full-fledged police agencies are integrated into school discipline, behavioral intervention, and threat assessment teams as part of the university administration's efforts to uphold its legal obligations to secure and maintain campus safety.¹⁵⁸ University police may decide whether to engage local police or student affairs in response to student misconduct that could be deemed criminal (for example, fights, theft, or underage drug and alcohol consumption).¹⁵⁹ When routed to student affairs,

¹⁵³ See generally Katherine Reynolds Lewis, *Why Schools Over-Discipline Children with Disabilities*, THE ATLANTIC (July 24, 2015), <https://www.theatlantic.com/education/archive/2015/07/school-discipline-children-disabilities/399563> [<https://perma.cc/2W3G-62XS>].

¹⁵⁴ Shoshana N. Jarvis & Jason A. Okonofua, *School Deferred: When Bias Affects School Leaders*, 11 SOC. PSYCH. & PERSONALITY SCI. 492, 496 (2020) ("While past research shows teachers endorse disciplining Black students more severely than White students only after repeated misbehavior, principals endorsed more severe discipline for a Black student, as compared to a White student, after a single misbehavior. And for principals, the difference in discipline severity persisted after further misbehavior."); see also J. LUKE WOOD, FRANK HARRIS III & TYRONE C. HOWARD, CMTY COLL. EQUITY ASSESSMENT LAB & UCLA BLACK MALE INST., GET OUT! BLACK MALE SUSPENSIONS IN CALIFORNIA PUBLIC SCHOOLS 5 (2018), <https://cdn.givingcompass.org/wp-content/uploads/2018/04/18164240/Black-Male-Suspension-California.pdf> [<https://perma.cc/X8RR-ZNM9>] (noting that Black males are exposed to a higher rate of exclusion and discipline).

¹⁵⁵ J. Eric Coleman, *Policing the College Campus*, in POLICING AMERICA'S EDUCATIONAL SYSTEMS 65, 72 (John Harrison Watts ed., 2019).

¹⁵⁶ BRIAN A. REAVES, U.S. DEP'T OF JUST., CAMPUS LAW ENFORCEMENT, 2011-12, at 2 (2015), <https://bjs.ojp.gov/content/pub/pdf/cle1112.pdf> [<https://perma.cc/CX4T-E6K3>].

¹⁵⁷ *Id.* at 1.

¹⁵⁸ See Coleman, *supra* note 155, at 66; Isabelle Lanser, Nelson B. Freimer & Michelle G. Craske, *Reducing Policing in Mental Health Crises: A Vision for University Campuses*, J. AM. COLL. HEALTH, Sept. 8, 2021, at 1, 1 (noting that "law enforcement is a cornerstone of mental health crisis risk management on nearly all college campuses").

¹⁵⁹ See Coleman, *supra* note 155, at 72; *Police Beat*, THE EASTERNER (Cheney, Wash.), Feb. 29, 2020, at 5, https://issuu.com/easterneronline/docs/103_issue_18 [<https://perma.cc/77YB-N6CM>] (reporting on a call to campus police for a student alcohol violation, with student referred to student affairs, and reporting on a call to campus police to break up a fight between two roommates, with students referred to student affairs); *UIPD Reminds Students of Medical Amnesty, Alcohol Safety*, UNIV. ILL. URBANA-CHAMPAIGN (Sept. 1, 2017), <https://police.illinois.edu/uipd-reminds-students-of-medical-amnesty-alcohol-safety> [<https://perma.cc/B2P2-L5B5>] ("University of Illinois Police have options when they stop someone who is suspected to be underage and abusing alcohol — they can make an arrest or write a ticket, or they can refer the matter to student discipline, thereby keeping it out of the criminal justice system. They very often choose the latter."); Carson Bonner & Ethan Hague, *Berry Students Vandalize WinShape Sign with Spray Paint*, VIKING FUSION (Nov. 17, 2022), <https://vikingfusion.com/2022/11/17/berry-students-vandalize-winshape-sign-with-spray-paint> [<https://perma.cc/Y2BM-R4NH>] (reporting that instead of being charged with a crime, student vandals were referred by Berry College Police to the Dean of Students for disciplinary action).

school discipline leaves students' records blemished. These flags on school records may not carry the same consequences as criminal records,¹⁶⁰ but they still create a method of tracking and monitoring students deemed troublemakers, some of whom have mental disabilities.¹⁶¹

Law scholars such as Professors Eisha Jain and Devah Pager have drawn from the sociological literature of “marking” to elucidate a framework for how arrests and even the criminal record alone, without conviction, leave a lasting mark on poor, Black, and otherwise marginalized persons navigating noncriminal institutions.¹⁶² Among others, employers and landlords use criminal records as a screening tool for determining who is worthy of access to space or a service.¹⁶³

The proverbial buck doesn't stop (or start) with a criminal record. In this Article, I expand the lens to how noncriminal institutional records mark race-class subjugated persons. This offers payoffs for scholars interested in criminal law, race, and poverty. Scholars such as Professors Beth Colgan, Issa Kohler-Hausmann, and Alexandra Natapoff have connected low-level misdemeanor and citation practices, and their attendant financial sanctions, to the regulation of race-class subjugated communities.¹⁶⁴ Professor Devon Carbado has created a framework to understand policing as serving the same management function as misdemeanors through juvenile charges, excessive fines and fees, the racialized control of space, and other tools for the regulation of poverty.¹⁶⁵ These important treatments generally rely on courts and their practices as the primary site of punishment. I expand the lens to

¹⁶⁰ For example, under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), administrators are required to disclose criminal activity publicly.

¹⁶¹ Although she discusses the K–12 context rather than higher education, Professor Jasmine Harris raises concerns that the “red flag laws” used in Florida school systems will carry disproportionate negative consequences for students with disabilities, particularly students of color. Jasmine E. Harris, *Taking Disability Public*, 169 U. PA. L. REV. 1681, 1705–06 (2021). See generally Elizabeth J. Upton, Note, “Some Kind of Notice” Is No Kind of Standard: The Need for Judicial Intervention and Clarity in Due Process Protections for Public School Students, 86 GEO. WASH. L. REV. 655, 662–63 (2018).

¹⁶² See Jain, *supra* note 82, at 170–74; PAGER, *supra* note 82, at 4 (“The ‘credential’ of a criminal record, like educational or professional credentials, constitutes a formal and enduring classification of social status, which can be used to regulate access and opportunity across numerous social, economic, and political domains.”).

¹⁶³ Jamiles Lartey, *How Criminal Records Hold Back Millions of People*, MARSHALL PROJECT (Apr. 1, 2023, 12:00 PM), <https://www.themarshallproject.org/2023/04/01/criminal-record-job-housing-barriers-discrimination> [<https://perma.cc/344T-4BBG>].

¹⁶⁴ See Beth A. Colgan, *Beyond Graduation: Economic Sanctions and Structural Reform*, 69 DUKE L.J. 1529, 1535–44 (2020); KOHLER-HAUSMANN, *supra* note 23, at 4; ALEXANDRA NATAPOFF, PUNISHMENT WITHOUT CRIME: HOW OUR MASSIVE MISDEMEANOR SYSTEM TRAPS THE INNOCENT AND MAKES AMERICA MORE UNEQUAL 1–18 (2018); Alexandra Natapoff, *Aggregation and Urban Misdemeanors*, 40 FORDHAM URB. L.J. 1043, 1045–46 (2013); Jenny Roberts, *Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts*, 45 U.C. DAVIS L. REV. 277, 280–82 (2011); Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 1313, 1315–16 (2012).

¹⁶⁵ Carbado, *supra* note 27, at 546, 551.

institutional practices where a formal criminal record or arrest may not exist.¹⁶⁶ I include a focus on administrative processes and records a step below courts and criminal adjudication. Red flagging is an underappreciated engine of low-level court systems and mass incarceration.

Bureaucracies and their personnel use red flagging as an alternative to formal criminal enforcement. But red flagging is a sublegal and sub-criminal method to manage and regulate institutional space. Looking across institutions brings to the forefront the ways red flagging practices signal and communicate to service providers a risk of future criminal activity.

B. Street Policing

The footprint of institutional policing is so unconstrained that it occurs beyond the institution into the streets and the home. I take up the street in this section and the home in the next.

Although there are several ways transinstitutional policing crosses institutional boundaries onto the street, I focus on two. First, in contexts that most often utilize internal specialized police forces (for instance, in the VHA), police engage with unhoused persons, not only in response to frontline worker or private complaints of noncriminal or conspicuous behavior, but also under the fraught framework of care and protection for the unhoused.¹⁶⁷ Second, institutional police operate within the larger community by enforcing racialized boundaries, both acting as a “buffer” for white institutions in race-class subjugated communities and preserving white racialized spaces despite their diverse workforce or clientele.¹⁶⁸

¹⁶⁶ Others have explored the intersection of social welfare and criminalization. See, e.g., Ocen, *supra* note 17, at 1543–50; Gustafson, *The Criminalization of Poverty*, *supra* note 17, at 651–70; GUSTAFSON, CHEATING WELFARE, *supra* note 17, at 51–70.

¹⁶⁷ See Jamelia N. Morgan, *Policing Marginality in Public Space*, 81 OHIO ST. L.J. 1045, 1048, 1055–56, 1061 (2020).

¹⁶⁸ I’m relying on Professor Elise Boddie’s concept of “racial territoriality.” Like Boddie, I use space, place, and territory synonymously while recognizing they have overlapping and varied meanings. She draws from social geography for the concept that “space has social meaning.” Elise C. Boddie, *Racial Territoriality*, 58 UCLA L. REV. 401, 435 (2010) (citing HENRI LEFEBVRE, *THE PRODUCTION OF SPACE* (Donald Nicholson-Smith trans., 1991)). Professor Bell calls the work of police “tasked with spatial exclusion in predominantly white” and wealthy areas “[p]atrolling [b]orders.” Bell, *supra* note 14, at 696; see also *id.* at 696–701. For additional background on the relationship between race and space more generally, see George Lipsitz, *The Racialization of Space and the Spatialization of Race: Theorizing the Hidden Architecture of Landscape*, 26 LANDSCAPE J. 10 (2007); Hari M. Osofsky, *The Geography of Justice Wormholes: Dilemmas from Property and Criminal Law*, 53 VILL. L. REV. 117, 123 (2008); and Angela Onwuachi-Willig, *Policing the Boundaries of Whiteness: The Tragedy of Being “Out of Place” from Emmett Till to Trayvon Martin*, 102 IOWA L. REV. 1113 (2017). See also Carbado, *supra* note 17, at 1494 (“Like the ‘old racial segregation’ (Jim Crow), the new racial segregation moves racial bodies and economic resources in and out of places, enacts borders that are vigorously policed, and reconfigures opportunities and various social structures (housing, schools, public transportation, parks) in ways that reproduce racial inequality.”).

I. *Gray Zone Policing.* — For at least fifty years, policing scholarship has recounted the role of police in addressing “situations of chronic vulnerability” — these include the unsheltered homeless and disputes among neighbors or family members who are unable to handle a loved one with mental disabilities.¹⁶⁹ These “gray zone” problems, “where the problems at hand do not call for formal or legalistic interventions” — including arrest and emergency apprehension — accompany police encounters with persons experiencing, or perceived to be experiencing, symptoms associated with mental disabilities.¹⁷⁰ Gray zone policing also includes encounters with unhoused persons.¹⁷¹ Gray zone policing involves a normative judgment in which “disorderly behavior” that is “nonviolent and nonthreatening” is often viewed as potentially dangerous.¹⁷² According to one study, many calls to police cover “responses to people regarded as being disruptive or acting in ways that made others feel uncomfortable.”¹⁷³ In general, police are used to removing disabled and unhoused persons from street corners and encampments where businesses and middle-class Americans deem them unwelcome.¹⁷⁴ In

¹⁶⁹ Jennifer D. Wood et al., *The “Gray Zone” of Police Work During Mental Health Encounters: Findings from an Observational Study in Chicago*, 20 POLICE Q. 81, 86 (2017); see also HERMAN GOLDSTEIN, *POLICING A FREE SOCIETY* 25 (1977).

¹⁷⁰ Wood et al., *supra* note 169, at 81, 88, 90–91; see also GOLDSTEIN, *supra* note 169, at 25 (“[T]he police most frequently care for those who cannot care for themselves: the destitute, the inebriated, the addicted, the mentally ill, the senile, the alien, the physically disabled, and the very young.”); ROBERT A. MATTHEWS & LOYD W. ROWLAND, *HOW TO RECOGNIZE AND HANDLE ABNORMAL PEOPLE: A MANUAL FOR THE POLICE OFFICER* 5 (1954); Egon Bittner, *Police Discretion in Emergency Apprehension of Mentally Ill Persons*, 14 SOC. PROBS. 278, 288 (1967).

¹⁷¹ See Wood et al., *supra* note 169, at 82.

¹⁷² *Id.* at 88.

¹⁷³ *Id.* This finding is consistent with other analyses. See Friedman, *supra* note 21, at 939 (“Police are called, again and again, to handle situations that involve domestic violence, substance abuse, mental illness, homelessness, and much more. People call 911 because they sense trouble or feel threatened. Some of the calls are makeweight — as a society, we’ve been treated to one example after another of the police being called on someone simply for living while black.”); VERA INST. OF JUST., 911 ANALYSIS: CALL DATA SHOWS WE CAN RELY LESS ON POLICE 2–5 (2022), <https://www.vera.org/downloads/publications/911-analysis-we-can-rely-less-on-police.pdf> [https://perma.cc/F65S-JDU5] (analyzing publicly available 911 data from nine cities and finding that calls were typically for “[b]usiness [c]hecks, [d]isturbances, [s]uspicious [p]ersons, and [c]omplaints,” *id.* at 3, and that “the majority of 911 calls involved noncriminal situations,” *id.* at 2); S. REBECCA NEUSTETER ET AL., VERA INST. OF JUST., *GATEKEEPERS: THE ROLE OF POLICE IN ENDING MASS INCARCERATION* 43 (2019), <https://www.vera.org/downloads/publications/gatekeepers-police-and-mass-incarceration.pdf> [https://perma.cc/K36C-C6D2] (“Review of data from two very different places — New York City and Tucson, Arizona — suggests that three out of four calls in which police respond don’t involve a crime in progress.”).

¹⁷⁴ See, e.g., Gennady Sheyner, *In Fight Against Homelessness, Palo Alto Turns to Police Officers*, PALO ALTO ONLINE (Aug. 31, 2021, 1:12 AM), <https://www.paloaltoonline.com/news/2021/08/31/palo-alto-banks-on-police-officers-to-address-homelessness> [https://perma.cc/79MA-DLGL]; Mike Duffy, *Sacramento Councilmember Valenzuela Responds to Homeless Concerns in Her District*, ABC 10 (Sept. 23, 2021, 6:08 PM), <https://www.abc10.com/article/news/local/sacramento/sacramento-councilmember-valenzuela-homeless/103-f6388a08-6a36-434c-932b-7f86ea202500> [https://perma.cc/4VBD-32EH]; Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space*, 84 AM. SOCIO. REV. 769, 769 (2019).

this section, I connect these concepts to two concerns for policing and formal institutions: that accessing formal institutions becomes another conduit for police interactions, and that some local police agencies rely on embedded police to manage unhoused persons within and in the areas surrounding formal institutions.¹⁷⁵

Seeking services, education, or care from institutions heightens the vulnerability of individuals living on the street (or in cars, congregate living shelters, or highway underpasses) to surveillance and police interactions. Increased police interactions expose the unhoused to “[p]athways to [p]olice [v]iolence.”¹⁷⁶ Police regularly engage in homeless outreach as the “stick” to coerce unhoused transit users, or individuals staying in transit hubs, to leave or accept the “carrot” of sheltering or other services.¹⁷⁷ In Philadelphia, custodians are provided cell phones to directly communicate with transit police, and the city has invested in SEPTA-secured, out-of-sight sleeping locations.¹⁷⁸ Many riders in large cities can use apps to report homeless persons to the transit police or other frontline workers.¹⁷⁹ Whether transit police-led homeless outreach is effective in the long term is an empirical question outside the

¹⁷⁵ As Professor Stuart’s ethnographic study of Los Angeles’s Skid Row brings to light, the density of poverty and homelessness in areas such as Skid Row means that police cannot target everyone for enforcement. *See generally* STUART, *supra* note 33. Facing essentially ubiquitous criminal activity, the police established a “symbiotic relation[ship],” *id.* at 8, with the other major institutions found on Skid Row — social service organizations and large congregate mega-shelters, *id.* at 24–25, 67–72. The police presented unhoused persons with a choice — either enroll in private rehabilitative “programs” or face arrest. *Id.* at 15. This coercive influence led people to enter systems of control beyond jails, such as shelters or rehabilitation programs, *see id.* at 4, which politicians, business leaders, and police deemed more effective than criminal sanction, *id.* at 68, 70, 72. Other studies have shown the aggressive policing of the homeless population in San Francisco’s Tenderloin District and elsewhere. *See* Chris Herring et al., *Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness*, 67 SOC. PROBS. 131, 134 (2020); Chris Herring, *Complaint-Oriented “Services”: Shelters as Tools for Criminalizing Homelessness*, 693 ANNALS AM. ACAD. POL. & SOC. SCI. 264, 267, 270 (2021).

¹⁷⁶ Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125, 125 (2017); *see id.* at 145–46.

¹⁷⁷ In Atlanta, the MARTA public transit system has partnered with a local housing and social service agency, HOPE, to engage in outreach with its MARTA police. Press Release, MARTA, MARTA Partnering with HOPE Atlanta to Address Homelessness (Aug. 18, 2020), <https://www.itsmarta.com/marta-partnering-with-hope-atlanta.aspx> [<https://perma.cc/VL6H-7M5R>]. In Philadelphia, SEPTA is “[i]ncreasing uniformed police deployment on board trains to enforce order maintenance and quality of life concerns that impact . . . customer[s]’ perception of safety.” SEPTA, SCOPE: SAFETY, CLEANING, OWNERSHIP, PARTNERSHIP, AND ENGAGEMENT 7 (2022), <https://www5.septa.org/wp-content/uploads/2022/09/scope.pdf> [<https://perma.cc/K9S6-W2TA>]; *see also* Metro Transit Police Department’s Homeless Action Team, METRO TRANSIT (July 12, 2021), https://www.metrotransit.org/Data/Sites/1/media/police/mtpdsheets_hat.pdf [<https://perma.cc/AH5D-B9F6>] (discussing police-led homeless outreach efforts on mass transit in Minneapolis and St. Paul).

¹⁷⁸ SEPTA, *supra* note 177, at 7.

¹⁷⁹ *See, e.g., id.* at 8.

scope of this Article.¹⁸⁰ I am pointing to it as an example of homeless persons' increased contact with police simply for using mass transit.

In addition, some cities, such as Philadelphia, use their transit police departments to support local police efforts to remove encampments near mass transit stations.¹⁸¹ When police “sweep” tent encampments and sanitation workers throw away the occupants' belongings, the houseless risk losing medications, important documents, identification cards, and personal items they need for overall well-being.¹⁸²

The displacement of unhoused persons from mass transit or colleges and universities¹⁸³ focuses order maintenance on groups stereotyped as inherently disorderly — the unhoused and people exhibiting actions associated with mental disabilities.¹⁸⁴

K-12 schools have the potential to draw attention to unhoused children¹⁸⁵ in ways that can lead to family policing. One way in which this occurs is via the school liaisons for students experiencing homelessness

¹⁸⁰ At least one report on homeless outreach teams operating in mass transit indicates that teams led by a county public health and housing agency outperformed the police-led homeless outreach teams. See MA'AYAN DEMBO, ALL. FOR CMTY. TRANSIT — L.A., OFF THE RAILS: ALTERNATIVES TO POLICING ON TRANSIT 28 (2020), http://allianceforcommunitytransit.org/wp-content/uploads/2020/06/AlternativesToPolicing_FullReport.pdf [<https://perma.cc/L4ES-RK7K>].

¹⁸¹ SEPTA, *supra* note 177, at 8; see also Steve Scauzillo, *Metro Will Keep Removing Homeless When Trains Get Cleaned but Will Explore Solutions*, L.A. DAILY NEWS (Jan. 29, 2023, 12:13 PM), <https://www.dailynews.com/2023/01/26/metro-will-keep-removing-homeless-when-trains-get-cleaned-but-will-explore-solutions> [<https://perma.cc/9T8G-W5P5>]; Susan Du, *Residents of Cedar-Riverside Homeless Camp Find Agencies Shifting Responsibility*, STAR TRIB. (Dec. 19, 2022, 5:37 PM), <https://www.startribune.com/homeless-camp-residents-in-cedar-riverside-find-local-governments-shifting-responsibility-for-them/600237296> [<https://perma.cc/675F-X2UX>].

¹⁸² Herring, *supra* note 174, at 774–75, 790–91; see also Anna Maria Barry-Jester, *Sweeps of Homeless Camps in California Aggravate Key Health Issues*, NPR (Jan. 10, 2020, 5:00 AM), <https://www.npr.org/sections/health-shots/2020/01/10/794616155/sweeps-of-homeless-camps-in-california-aggravate-key-health-issues> [<https://perma.cc/HSC2-U2L9>]; NAT'L L. CTR. ON HOMELESSNESS & POVERTY, TENT CITY, USA: THE GROWTH OF AMERICA'S HOMELESS ENCAMPMENTS AND HOW COMMUNITIES ARE RESPONDING 34–36 (2017), https://homelesslaw.org/wp-content/uploads/2018/10/Tent_City_USA_2017.pdf [<https://perma.cc/6D9N-MYXX>].

¹⁸³ University police also seem to displace unhoused nonstudents or cite them for trespass and other offenses. E.g., Morgan Anderson & Lindsay Smith, *Homeless Man Arrested for Trespassing on Campus Wednesday, Student Leaders Voice Concerns*, THE SUNFLOWER (Oct. 10, 2020), <https://thesunflower.com/52729/news/homeless-man-arrested-for-trespassing-on-campus-wednesday-student-leaders-voice-concerns> [<https://perma.cc/W3E8-M4LL>] (college police arrest unhoused person on campus for trespass); John Ross Ferrara, *University Police Tase Homeless Man on Campus; Former Philosophy Student Resisted Arrest, Cops Say*, LOST COAST OUTPOST (Mar. 27, 2015, 7:45 PM), <https://lostcoastoutpost.com/2015/mar/27/university-police-tase-homeless-man-campus-former> [<https://perma.cc/649V-24M7>] (same).

¹⁸⁴ See, e.g., BEN-MOSHE, *supra* note 65, at 141; Morgan, *supra* note 167, at 1054; Camille A. Nelson, *Frontlines: Policing at the Nexus of Race and Mental Health*, 43 FORDHAM URB. L.J. 615, 627–30 (2016).

¹⁸⁵ See Mihir Zaveri, *Number of Homeless Students Rises to New High, Report Says*, N.Y. TIMES (Feb. 3, 2020), <https://www.nytimes.com/2020/02/03/us/Homeless-students-public-schools.html> [<https://perma.cc/9DUK-QZBL>].

required under the McKinney-Vento Homeless Assistance Act.¹⁸⁶ Liaisons are meant to ensure homeless students have equal access to education, for example, by supporting families and children as they navigate state residency and identification requirements.¹⁸⁷ The purpose of the liaison is grounded in care ideals.¹⁸⁸ However, the carceral logics of the institution sometimes propel School Resource Officers into the liaison role, and liaisons often connect children to the family regulation system.¹⁸⁹ Even though the California Department of Education announced that School Resource Officers should not play the role of homeless youth liaisons, eleven percent of McKinney-Vento school liaisons “reported that school-site liaisons tended to be School Resource Officers.”¹⁹⁰ This response suggests that schools around the country may naturally turn to the police to serve this function, particularly absent a directive not to do so. These steps run contrary to care objectives and may reduce trust between students and school officials.¹⁹¹ Students might choose not to disclose their unhoused status for fear of state involvement in their family’s lives.

Lack of housing places homeless youth at increased risk of drawing the attention of police. Homeless youth are more likely to be unsheltered (for example, sleeping in cars, or on the street) than any other homeless person, and therefore these youth engage in criminal activity to meet their survival needs.¹⁹² Moreover, place-based policing strategies target areas where houseless individuals — including children — cluster to break from social norms of indoor living.¹⁹³ Houseless kids are subject

¹⁸⁶ 42 U.S.C. §§ 256, 290cc-21 to -35, 11301–11489; *see id.* § 11432(g)(1)(J)(ii). The Act defines homelessness as “lack[ing] a fixed, regular, and adequate nighttime residence,” *id.* § 11302(a)(1), including living doubled up (that is, living with others due to housing loss or economic hardship, which is true for the majority of K–12 homeless students). This definition is broader than that of the U.S. Department of Housing and Urban Development, which does not recognize the doubling up of families. *See generally* Mihir Zaveri, *Is Youth Homelessness Going Up or Down? It Depends on Whom You Ask*, N.Y. TIMES (Mar. 24, 2020), <https://www.nytimes.com/2020/03/17/us/youth-homelessness.html> [https://perma.cc/MU38-VYV3].

¹⁸⁷ *See* 42 U.S.C. § 11432(g)(6)(A).

¹⁸⁸ *See generally* ACLU & CAL. HOMELESS YOUTH PROJECT, SERVING STUDENTS HIDDEN IN PLAIN SIGHT (2019), https://www.aclusocal.org/sites/default/files/homelessk12report_aclu_r4_digital.pdf [https://perma.cc/V93K-RP9D].

¹⁸⁹ The recent amendments to the McKinney-Vento Act require that the liaison refer families to outside services, including social services. 42 U.S.C. § 11432(g)(6)(A)(iv).

¹⁹⁰ *See* ACLU & CAL. HOMELESS YOUTH PROJECT, *supra* note 188, at 20. One-third of individual liaisons across California (over 550) completed a survey from the California Homeless Youth Project and ACLU for a report on the roles of the homeless student liaisons. *Id.* at 3; CAL. DEP’T OF EDUC., DESIGNATING LIAISONS FOR STUDENTS EXPERIENCING HOMELESSNESS 4 (2019).

¹⁹¹ *See* Fedders, *supra* note 11, at 1484.

¹⁹² Jerreed D. Ivanich & Tara D. Warner, *Seen or Unseen? The Role of Race in Police Contact Among Homeless Youth*, 36 JUST. Q. 816, 817 (2019).

¹⁹³ *See* Richard Berk & John MacDonald, *Policing the Homeless: An Evaluation of Efforts to Reduce Homeless-Related Crime*, 9 CRIMINOLOGY & PUB. POL’Y 813, 816 (2010).

to status offenses such as violating curfew.¹⁹⁴ “LGBT homeless youth often report fear . . . when accessing shelters, worrying that workers may turn them in to the police” or that police will force them to return to abusive family circumstances.¹⁹⁵

The VA setting highlights how institutions can link health care to the policing of unhoused persons well beyond institutional walls. The VA has embraced using police as a conduit to care.¹⁹⁶ The VA and its providers articulate care-based or protective objectives when engaging police.¹⁹⁷ Fundamentally, however, the health system operationalizes a criminalizing apparatus in ways that I have elsewhere described as potentially coercive instead of respectful of patient autonomy.¹⁹⁸ Using co-responder models or police crisis intervention teams, local police engage veterans with VA police to coax them into receiving treatment and services.¹⁹⁹ Some VA doctors embrace and encourage this form of policing for seemingly good reasons, such as to facilitate the diversion of mentally disabled veterans to their hospitals instead of jail: jail admissions discontinue or interrupt mental health care and jail can create acute mental health problems.²⁰⁰ With every veterans hospital emergency department visit or admission, the hope is that any eligible veteran will accept VA social services and mental health care. In addition to law enforcement bringing a houseless veteran to the hospital, the VA supports an entire complex of almost five hundred veterans treatment courts and other diversionary projects to move individuals with mental health or drug use concerns into a heavily monitored process for recovery.²⁰¹ However, when hospital policing extends to the streets and community, it has the potential to create distrust between patients and health care providers.²⁰²

¹⁹⁴ See *Juvenile Justice Reform Initiatives in the States 1994-1996: Curfew*, OFF. JUV. JUST. & DELINQ. PREVENTION, https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/reform2/ch2_c.html [<https://perma.cc/7KVE-PSPQ>].

¹⁹⁵ Sean McCandless, *LGBT Homeless Youth and Policing*, 20 PUB. INTEGRITY 558, 560 (2018).

¹⁹⁶ See Patel, *supra* note 59, at 815–16, 842–46.

¹⁹⁷ See, e.g., DBC GUIDEBOOK, *supra* note 74, at 19, 22.

¹⁹⁸ See Patel, *supra* note 59, at 860.

¹⁹⁹ See *infra* pp. 854–56; Rob Kuznia, *Veterans Talking Veterans Back from the Brink: A New Approach to Policing and Lives in Crisis*, WASH. POST (Mar. 20, 2019, 8:00 PM), https://www.washingtonpost.com/national/veterans-talking-veterans-back-from-the-brink-a-new-approach-to-policing-and-lives-in-crisis/2019/03/20/c1add29e-4508-11e9-8aab-95b8d80a1e4f_story.html [<https://perma.cc/ZVP2-6MXT>] (describing the Veterans Mental Evaluations Team’s intervention with a homeless veteran in need of support services); L.A. CNTY. SHERIFF’S DEP’T & L.A. CNTY. DEP’T OF MENTAL HEALTH, *LASD MENTAL EVALUATION TEAMS ANNUAL REPORT 117* (2019), https://www.lasd.org/pdf/Transparency_2019_Annual_Report_MET_062520.pdf [<https://perma.cc/3CA9-T9M9>] (discussing the VA Homelessness Liaison program).

²⁰⁰ See Anne S. Douds & Don Hummer, *When a Veterans’ Treatment Court Fails: Lessons Learned from a Qualitative Evaluation*, 14 VICTIMS & OFFENDERS 322, 323 (2019).

²⁰¹ See *What Is a Veterans Treatment Court?*, JUST. FOR VETS, <https://justiceforvets.org/what-is-a-veterans-treatment-court> [<https://perma.cc/WYJ8-5UBK>]; Douds & Hummer, *supra* note 200, at 322.

²⁰² See Patel, *supra* note 59, at 850, 859, 862.

Proponents of police involvement in homeless outreach and calls for police service argue that this involvement benefits individuals and society and allows care workers to more safely engage persons who have mental disabilities or are in distress.²⁰³ The conventional view is that police involvement on the streets alongside mental health and social workers adds a layer of security for care workers, and law enforcement presence increases the likelihood of seemingly voluntary hospitalization and mental health treatment.²⁰⁴ One of the most utilized and researched joint programs are crisis intervention teams. However, to date, multiple studies have shown that after several months, police officers' knowledge of crisis intervention material decreases significantly²⁰⁵ and the overall arrest rates for crisis intervention team-trained officers and other officers remain similar.²⁰⁶ This suggests that police involvement in hospital diversions or social work interventions yields inconsistent results over time. Even still, family members, persons experiencing a crisis, and other community members report they are more comfortable calling law enforcement when trained police officers respond.²⁰⁷ This is not surprising because, to date, there has been no large-scale option other than police.²⁰⁸ Another question is whether police training focused on engaging persons with mental disabilities adequately addresses race or other vulnerabilities. There are good reasons to view increased police interactions as trauma-inducing and violence-producing, particularly for Black people.²⁰⁹ Research shows that the culture of policing and police academies contributes to poor training outcomes for race or mental

²⁰³ See John J. Carr, *An Administrative Retrospective on Police Crisis Teams*, 60 SOC. CASEWORK 416, 418–22 (1979) (describing a local program involving a police crisis team); Albert R. Roberts, *Training Police Social Workers: A Neglected Area of Social Work Education*, 14 J. EDUC. FOR SOC. WORK 98, 102 (1978); Harvey Treger, *Guideposts for Community Work in Police-Social Work Diversion*, FED. PROB., Sept. 1980, at 3, 3.

²⁰⁴ See, e.g., Bittner, *supra* note 170, at 285, 288.

²⁰⁵ E.g., Michael T. Compton & Victoria H. Chien, *Factors Related to Knowledge Retention After Crisis Intervention Team Training for Police Officers*, 59 PSYCHIATRIC SERVS. 1049, 1050–51 (2008); see also Michelle Lynne Nerish, *Training Effectiveness Among Veteran Affairs Officers: An Investigation into the Role of the Trainer with a Train the Trainer Model* 36 (Aug. 2015) (Ph.D. dissertation, Palo Alto University) (ProQuest). Others suggest the long-term effectiveness remains low due to a lack of funding to scale up the availability of the training. See David Griffith, *De-Escalation Training: Learning to Back Off*, POLICE MAG. (Mar. 2, 2016), <http://www.policemag.com/channel/careers-training/articles/2016/03/de-escalation-training-learning-to-back-off.aspx> [<https://perma.cc/KWL4-M8HQ>].

²⁰⁶ Jennifer L.S. Teller et al., *Crisis Intervention Team Training for Police Officers Responding to Mental Disturbance Calls*, 57 PSYCHIATRIC SERVS. 232, 236 (2006).

²⁰⁷ *Id.* at 235. See generally Jennifer L. Schulenberg, *Police Decision-Making in the Gray Zone: The Dynamics of Police-Citizen Encounters with Mentally Ill Persons*, 43 CRIM. JUST. & BEHAV. 459 (2016).

²⁰⁸ See Akbar, *supra* note 17, at 1783, 1785 (describing the police as a “sprawling institution,” *id.* at 1783, and expressing that “it was beyond my imagination to conjure a world that did not rely on prisons and police,” *id.* at 1785).

²⁰⁹ See Bell, *supra* note 32, at 2108.

health-related encounters.²¹⁰ In their study, Professors Jeffrey Fagan and Alexis Campbell found that race remained the dominant predictor of fatal shootings among crisis intervention team-trained officers.²¹¹

2. *Boundary Formation.* — The secondary observation for the institution-to-street-policing pathway is the role of police in enforcing the boundaries between Black and white spaces.²¹² More specifically, as Professor Elise Boddie has explained, “racialized spaces represent more than a physical set of boundaries or associations: They correlate with and reinforce cultural norms about spatial belonging and power.”²¹³ Norms around space can reinforce conduct by police and bureaucratic administrators that prevents or discourages race-class subjugated individuals from accessing white spaces.²¹⁴

Racial identity shapes not only the experiences of race-class subjugated communities within bureaucratic organizations²¹⁵ but also the

²¹⁰ Jeffrey A. Fagan & Alexis D. Campbell, *Race and Reasonableness in Police Killings*, 100 B.U. L. REV. 951, 966–67, 972–73, 976 (2020).

²¹¹ *Id.* at 951, 998–99.

²¹² See generally Boddie, *supra* note 168. In addition to Boddie’s racial territoriality, I draw from Professor Elijah Anderson’s description of “the white space” as an environment that is composed of predominately white individuals and is perceived as “off limits” territory to Black people. Elijah Anderson, “The White Space,” 1 SOCIO. RACE & ETHNICITY 10, 10 (2015); see also *id.* at 13. Race and policing scholars have examined and theorized how racial control and space create avenues for police violence. See Bell, *supra* note 14, at 690 (“One of the basic strategies of police work is managing space, which includes surveilling people within physical communities of color and repelling people who, to police, seem out of place.”); I. Bennett Capers, *Policing, Race, and Place*, 44 HARV. C.R.-C.L. L. REV. 43, 60–72 (2009); Taja-Nia Y. Henderson & Jamila Jefferson-Jones, #LivingWhileBlack: Blackness as Nuisance, 69 AM. U. L. REV. 863, 881–84 (2020).

²¹³ Boddie, *supra* note 168, at 438.

²¹⁴ Of course, I am not excluding other groups in this consideration. Anti-Black racism occurs in nonwhite racial groups, see Efrén Pérez et al., *Prejudiced When Climbing Up or When Falling Down? Why Some People of Color Express Anti-Black Racism*, 117 AM. POL. SCI. REV. 168, 168 (2023), and racialized violence occurs against non-Black, but racialized, individuals, see *id.*; LAURA E. GÓMEZ, *INVENTING LATINOS: A NEW STORY OF AMERICAN RACISM* (2020); Paloma Esquivel, *El Paso Massacre Was Just the Latest in Long Line of Anti-Latino Violence in the U.S.*, L.A. TIMES (Aug. 16, 2019, 3:00 AM), <https://www.latimes.com/california/story/2019-08-16/el-paso-massacre-timeline-of-anti-latino-violence-in-united-states> [<https://perma.cc/DK6X-WSRS>] (chronicling incidents of violence); Weiyi Cai et al., *Swelling Anti-Asian Violence: Who Is Being Attacked Where*, N.Y. TIMES (Apr. 3, 2021), <https://www.nytimes.com/interactive/2021/04/03/us/anti-asian-attacks.html> [<https://perma.cc/W8ZK-XXGY>] (finding “more than 110 episodes since March 2020 in which there was clear evidence of race-based hate”).

²¹⁵ Institutions are racialized spaces that send messages of belonging and appropriateness. See Capers, *supra* note 212, at 60–72; Devon W. Carbado & Patrick Rock, *What Exposes African Americans to Police Violence?*, 51 HARV. C.R.-C.L. L. REV. 159, 163 (2016) (“Racial segregation . . . both concentrates African Americans in ‘high crime areas’ in which entire communities are criminally suspect and makes African Americans ‘out of place’ and thus suspicious when they are not in predominantly black areas”); Carbado, *supra* note 17, at 1497 (“Marginalized groups are more vulnerable to police contact and violence because members of these groups often have nonnormative identities to which stereotypes of criminality and presumptions of disorder apply.”). In this project, I am less concerned with individual interactions between police or care workers and marginalized clientele of social institutions. Rather, I zoom out to view the design and structural dynamics that create opportunities to manage and control race-class subjugated community members

boundary-making process with neighborhoods that surround institutions. In my view, the presence of Black or Latinx, disabled, and poor people in white spaces invites extra-legal suspicion, due to criminogenic narratives and racial stereotypes of crime and deviance.²¹⁶

In the context of K–12 education, Professor LaToya Baldwin Clark theorizes the ways school districts enforce racialized borders when out-of-district Black families cross into white affluent educational districts.²¹⁷ She describes how state education codes allow criminal prosecution and civil penalties²¹⁸ when nonresidents steal education, that is, access education outside a school district’s borders.²¹⁹ When Professor Baldwin Clark uses the term “stealing education,” she is “referring to the practices surrounding how local school districts and law enforcement surveil and punish that behavior.”²²⁰ State laws permit schools to threaten the parents of nonresident children with criminal prosecution.²²¹ Boundaries are policed by school administrators, school district officials, and even other community members.²²² The civil, criminal, and administrative penalties enact racialized boundaries around predominantly white areas through the message that Black children don’t belong in schools or residential areas.

Racialized school district boundaries create further surveillance and criminalization of Black families.²²³ As an example, consider the case of Kelley Williams-Bolar, who enrolled her children in the Copley-Fairlawn school district, located in Akron, Ohio.²²⁴ She lived in subsidized housing in a high-crime area, so she enrolled her children in a suburban school using her father’s address.²²⁵ The school employed investigators to surveil her and her family, ultimately penalizing her with \$30,000 in restitution for educational funds, ten days in jail, and two years of community probation.²²⁶ This example shows the way

within racialized institutions. This cross-institutional examination of policing structures contributes to the scholarly understanding of everyday coercive and controlling experiences of race-class subjugated persons. See Jude Paul Matias Dizon, *Protecting the University, Policing Race: A Case Study of Campus Policing*, 16 J. DIVERSITY HIGHER EDUC. 410, 420 (2023) (discussing “how racial difference is embedded into campus policing”).

²¹⁶ See Nathalie Baptiste, *Campus Cops: Authority Without Accountability*, AM. PROSPECT (Nov. 2, 2015) <https://prospect.org/civil-rights/campus-cops-authority-without-accountability> [<https://perma.cc/DN6J-BBKV>]. See generally BEN-MOSHE, *supra* note 65.

²¹⁷ LaToya Baldwin Clark, *Education as Property*, 105 VA. L. REV. 397, 403–08 (2019).

²¹⁸ *Id.* at 398.

²¹⁹ *Id.*; LaToya Baldwin Clark, *Stealing Education*, 68 UCLA L. REV. 566, 596–97 (2021).

²²⁰ See Baldwin Clark, *Education as Property*, *supra* note 217, at 402.

²²¹ *Id.*

²²² Baldwin Clark, *Stealing Education*, *supra* note 219, at 592.

²²³ *Id.* at 592, 611–12, 619; Baldwin Clark, *Education as Property*, *supra* note 217, at 398, 420.

²²⁴ Baldwin Clark, *Education as Property*, *supra* note 217, at 403.

²²⁵ *Id.*; Mae C. Quinn, *The Fallout from Our Blackboard Battlegrounds: A Call for Withdrawal and a New Way Forward*, 15 J. GENDER RACE & JUST. 541, 553–54 (2012).

²²⁶ Baldwin Clark, *Education as Property*, *supra* note 217, at 405–07; Quinn, *supra* note 225, at 554.

policing school enrollment — albeit originating from bureaucratic administrators, not police — leads to boundary making, where the suburban school was “off limits” to Ms. Williams-Bolar’s Black children.²²⁷ At least one school district has established tip lines for out-of-district Black and brown education “thieves” and even stationed (nonpolice) school attendance officers at transit stations to catch students coming into the community from elsewhere.²²⁸ When schools enforce school district borders, they send messages about which children belong in and around predominately white schools.²²⁹

University and college police enforce racial boundaries in the areas surrounding university and college campuses, where students and employees travel, live, or shop.²³⁰ This form of policing blurs the boundaries between city and college, but reinforces the Black-white boundary. University police, such as those within Yale University,²³¹ the University of Pennsylvania,²³² and the University of Chicago,²³³ have jurisdiction and arrest powers extending into the surrounding neighborhoods, in part to address the white fear of the race-class subjugated communities living in said neighborhoods.²³⁴ At the same time, police at predominantly white colleges act as a buffer to prevent local police from responding to disruptions due to loud parties or from enforcing laws to prevent underage drinking.²³⁵

This same logic creates vulnerability for nonwhite students, employees, and residents. When the area surrounding the college or university is predominantly white, Black employees and residents complain of

²²⁷ Anderson, *supra* note 212, at 10.

²²⁸ Baldwin Clark, *Education as Property*, *supra* note 217, at 420 (“We have a good track on which kids aren’t living here The kids know that we check the platform and if they get caught, they get thrown out.” (quoting Jack Encarnacao, *Quincy Schools Crack Down on Out-of-Towners*, PATRIOT LEDGER (June 19, 2010, 7:15 PM), <https://www.patriotledger.com/story/news/education/2010/06/19/quincy-schools-crack-down-on/40139667007> [<https://perma.cc/26N9-6RTL>])).

²²⁹ See Boddie, *supra* note 168, at 438.

²³⁰ See Hopkins & Neff, *supra* note 42, at 134–35. See generally Henderson & Jefferson-Jones, *supra* note 212, at 881–84. State statutes grant the physical jurisdiction and designate whether authority extends to public and private or only public institutions. Where campus police are granted full jurisdiction, they are conferred statewide police powers; extended-jurisdiction campus police may “patrol [the] campus and some property beyond”; and limited jurisdiction may allow only campus police authority on property or facilities owned by the school. Baptiste, *supra* note 216.

²³¹ See YALE UNIV., YALE UNIVERSITY POLICE CAREER OPPORTUNITIES, https://your.yale.edu/sites/default/files/files/PublicSafety/police_recruitment_brochure.pdf [<https://perma.cc/696F-VXZK>].

²³² PHILA. POLICE DEP’T & UNIV. OF PA. POLICE DEP’T, *supra* note 38.

²³³ See *University of Chicago Police Department*, UNIV. OF CHI., <https://safety-security.uchicago.edu/about/police> [<https://perma.cc/RD7W-W2VE>].

²³⁴ See Bell, *supra* note 14, at 697; Sanjali De Silva, *Police Divestment Efforts Must Include Universities*, ACLU (July 31, 2020), <https://www.aclu.org/news/criminal-law-reform/police-divestment-efforts-must-include-universities> [<https://perma.cc/A2BD-PV8X>].

²³⁵ Claire Potter, *What Campus Police Really Do*, PUB. SEMINAR (May 26, 2021), <https://publicseminar.org/essays/what-campus-police-really-do> [<https://perma.cc/GCW9-7LRH>].

being stopped by police there,²³⁶ sometimes leading to tragic police killings.²³⁷ Additionally, the use of police in this institutional context “otherizes” Black and other minority students on predominantly white campuses.²³⁸ Students, and even campus visitors,²³⁹ have encountered university police in response to white claims of racial territoriality.²⁴⁰ In 2018, Lolade Siyonbola was questioned by campus police when a fellow white student called 911, presuming Siyonbola, who was found asleep, did not belong in the graduate studies common room.²⁴¹

In one study examining five years of Clery Act data²⁴² — among data from other sources — for the University of California, Los Angeles (UCLA), researchers determined the “biggest single [police] event type is property related [such as theft or vandalism,] and a close second involves people whose presence or behavior is deemed disruptive or out of place, without any indication of violence.”²⁴³ The purported purpose of the University’s police — to respond in a gentler and more appropriate manner to students potentially in mental health distress or to instances of student violence — is tied to significantly fewer events.²⁴⁴

²³⁶ See *Employee Alleges UCLA Police Targeted Him Because He’s Black*, NBC L.A. (May 27, 2016), <https://www.nbclosangeles.com/news/local/employee-alleges-ucla-police-targeted-him-because-hes-black/2006254> [<https://perma.cc/6435-9YT7>]; see also Travis Gettys, *Cops Grill Black University of Massachusetts Employee After Caller Reports Him for Walking to Work*, RAW STORY (Sept. 17, 2018, 8:26 AM), <https://www.rawstory.com/2018/09/cops-grill-black-university-massachusetts-employee-caller-reports-walking-work> [<https://perma.cc/JRR8-W3B6>].

²³⁷ See, e.g., Mike Hellgren, *Key Interviews Released in Controversial Baltimore City Death-in-Custody Case*, CBS NEWS BALT. (Feb. 11, 2014, 7:13 PM), <https://www.cbsnews.com/baltimore/news/baltimores-top-prosecutors-releases-interviews-in-controversial-death-in-custody-case> [<https://perma.cc/VTE5-6E9L>] (reporting that a Black man was killed during a 2013 traffic stop that involved at least one Morgan State University officer).

²³⁸ See Anderson, *supra* note 212, at 13; Bell, *supra* note 14, at 697 & n.215.

²³⁹ See, e.g., Dakin Andone & Hollie Silverman, *A Mom on a College Tour Called the Cops on Two Native American Teens Because They Made Her “Nervous,”* CNN (May 5, 2018, 3:13 PM), <https://www.cnn.com/2018/05/04/us/colorado-state-university-racial-profiling-trnd/index.html> [<https://perma.cc/ES2R-8B7M>]. During a college campus tour at Colorado State University, a white woman called the police on two Native American prospective students. *Id.* The caller told the 911 operator, “They’re not — definitely not — a part of the tour.” *Id.* Police were dispatched to the college, and the teens were stopped and questioned by police (and ultimately, missed the rest of the tour). *Id.*

²⁴⁰ See *Police Called on Black Smith College Student Eating Lunch*, CBS NEWS (Aug. 3, 2018, 6:35 AM), <https://www.cbsnews.com/news/police-called-on-black-smith-college-student-eating-lunch> [<https://perma.cc/56ML-JS23>].

²⁴¹ See Brandon Griggs, *A Black Yale Graduate Student Took a Nap in Her Dorm’s Common Room. So a White Student Called Police*, CNN (May 12, 2018, 12:32 AM), <https://www.cnn.com/2018/05/09/us/yale-student-napping-black-trnd/index.html> [<https://perma.cc/TF48-K2WQ>].

²⁴² ALEJANDRA A. MARTINEZ ET AL., UCLA LEWIS CTR. FOR REG’L POL’Y STUD., *MAPPING YESTERDAY’S POLICE ACTIVITY AT UCLA 4* (2021), <https://scholarship.org/content/qt4jm4t63k/qt4jm4t63k.pdf> [<https://perma.cc/FZ5G-8PQP>]. The Clery Act requires institutions of higher learning to report crime statistics and alert the campus and neighborhood community of instances of crime. See 20 U.S.C. § 1092(f). For background on the Clery Act, see Dorinda L. Dowis & Aaron “Chip” Reese, *Risk Assessment at the College Campus*, in *POLICING AMERICA’S EDUCATIONAL SYSTEMS* 82–83 (John Harrison Watts ed., 2019).

²⁴³ MARTINEZ ET AL., *supra* note 242, at 5.

²⁴⁴ See *id.* at 14 tbl.1.

According to the report, only seven percent of police events are related to health/welfare concerns and only nine percent involve threats or force.²⁴⁵ Much of the University police's activity occurs off campus, in the surrounding neighborhoods.²⁴⁶ Off-campus activity also increased from 2014 to 2019.²⁴⁷ It is worth noting that the study shows, based on mapping of police events, significant police activity far from the University's main campus.²⁴⁸ Thus, university police quite literally reach into the streets and community.

In the context of mass transit, police enforce racialized space by increasing their presence in the areas surrounding centers of transportation. The increased presence of police leads to more police encounters with race-class subjugated persons.²⁴⁹ One study used data from the D.C. Metro system to test the impact of a transit user's race and local racial composition on fare-citation outcomes (warning versus citation).²⁵⁰ It determined Black riders were at increased likelihood of receiving a fine rather than a warning when a transit station was located in a predominantly white neighborhood.²⁵¹ These findings are consistent with other studies on race and space.²⁵² Fare evasion enforcement in white neighborhoods is a reminder to Black riders that they are "out of place" and do not belong in these spaces.²⁵³

This section focused on two ways policing breaks and forms boundaries for race-class subjugated community members. It highlights the ways institutional incursions overlap and serve as conduits for street policing. The consequences of institutional police acting as first responders — on the streets — to potential mental health crises and undertaking homeless outreach have been inadequately considered. Distrust, alienation, triggering, and failure to pick up refill prescriptions are all understudied outcomes from police interventions with the homeless.

²⁴⁵ *Id.* at 12 fig.7.

²⁴⁶ *Id.* at 6 ("Of the nearly 8,000 [police-reported activities and arrests] recorded in 2019, roughly one-third occurred outside of UCLA's campus and otherwise relevant jurisdictions . . .").

²⁴⁷ *Id.* at 8.

²⁴⁸ *Id.* at 6–7, 6 fig.1. This police activity may have occurred in UCLA-owned buildings or student housing many miles away from the main campus. *See id.* at 7.

²⁴⁹ *See* Soss & Weaver, *supra* note 1, at 570.

²⁵⁰ TaLisa J. Carter & Lallen T. Johnson, "Blacks Can't Jump": The Racialization of Transit Police Responses to Fare Evasion, 13 RACE & JUST. 463, 469 (2021).

²⁵¹ *Id.* at 477.

²⁵² *See, e.g.,* Leo Carroll & M. Lilliana Gonzalez, *Out of Place: Racial Stereotypes and the Ecology of Frisks and Searches Following Traffic Stops*, 51 J. RSCH. CRIME & DELINQ. 559, 576 (2014) (explaining the "out-of-place" dynamic in the context of traffic searches and frisks); Ozzy Llinas Goodman, *BART Records Reveal Racial Disparities in Fare Evasion Enforcement*, KALW (Dec. 19, 2019, 4:35 PM), <https://www.kalw.org/news/2019-12-19/bart-records-reveal-racial-disparities-in-fare-evasion-enforcement> [<https://perma.cc/L5A6-5N6W>] (reporting "stark racial disparities in [Bay Area Rapid Transit] fare evasion enforcement").

²⁵³ *See* Carter & Johnson, *supra* note 250, at 464–65.

C. Wellness Checks

This section examines how “wellness checks,” sometimes called “welfare checks,” initiated through formal institutions expand policing of the public. I am focusing in this section on wellness checks stemming from interactions or relationships with formal institutions as an overlapping pathway for local and embedded police to access the homes of race-class subjugated community members. In the municipal policing context, police might perform a welfare check when a family member is concerned about the recent erratic behavior of an adult child or sibling diagnosed with a mental disability,²⁵⁴ on an elderly person who lives alone,²⁵⁵ or when a neighbor or landlord hears yelling, loud music, or the throwing of objects.²⁵⁶ But as with other tools of policing the public, welfare checks carry the potential to morph into engines of mass criminalization and police violence. The rates of violence and death at the hands of police during welfare checks, particularly in race-class subjugated communities, have raised important questions,²⁵⁷ namely, whether police are the appropriate professional force to engage potentially unwell persons or whether another trained professional group is better suited for this responsibility.²⁵⁸ The same questions arise — perhaps with more force — in the context of other institutions. Transinstitutionally, wellness checks are a frontline worker’s tool to monitor or confirm the wellbeing of a person or family. Police perform wellness checks at the

²⁵⁴ See, e.g., Jon Gerberg & Alice Li, *When a Call to the Police for Help Turns Deadly*, WASH. POST (June 22, 2022), <https://www.washingtonpost.com/investigations/interactive/2022/police-shootings-mental-health-calls> [<https://perma.cc/MMK6-93Q6>] (reporting on the death of Damian Daniels following three police wellness checks over a forty-eight-hour period); Brandy Zadrozny, *Protecting Your Mentally Ill Child from the Cops*, DAILY BEAST (Apr. 14, 2017, 12:24 PM), <https://www.thedailybeast.com/protecting-your-mentally-ill-child-from-the-cops> [<https://perma.cc/TN6S-XM9D>] (reporting on parents “reluctant to call 911 in fear that a poorly trained officer will escalate a mental-health emergency into a crime”).

²⁵⁵ See, e.g., Lisa W. Foderaro, *Police Killing of Mentally Ill Black Man Is, 5 Years Later, Headed to Trial*, N.Y. TIMES (Oct. 31, 2016), <https://www.nytimes.com/2016/11/01/nyregion/police-shooting-of-mentally-ill-black-man-kenneth-chamberlain-trial-set-to-begin.html> [<https://perma.cc/FZ9F-8ZW9>] (reporting on the killing of Kenneth Chamberlain Sr. by police during a wellness check); Doug Criss & Leah Asmelash, *When a Police Wellness Check Becomes a Death Sentence*, CNN (Oct. 19, 2019, 7:33 AM), <https://www.cnn.com/2019/10/19/us/wellness-check-police-shootings-trnd/index.html> [<https://perma.cc/PC3U-ZM3U>] (collecting examples of wellness checks with lethal outcomes).

²⁵⁶ See Esmey Jimenez, *What Role Should Police Play in Mental Health Calls? Seattle Has Small, Limited Crisis Staff*, SEATTLE TIMES (Aug. 24, 2022, 9:59 AM), <https://www.seattletimes.com/seattle-news/mental-health/what-role-should-police-play-in-mental-health-crisis-calls-seattle> [<https://perma.cc/LKC6-22K6>].

²⁵⁷ See Gerberg & Li, *supra* note 254 (reporting results of an investigation finding that between 2019 and 2021, there were 178 cases involving police “shooting and killing the very people they were called on to assist”); Police Shootings Database 2015–2023, WASH. POST (Apr. 5, 2023), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database> [<https://perma.cc/W33P-QAR6>] (showing that, as of October 2023, twenty percent of victims (1,790 people) shot by police since 2015 were experiencing a mental illness crisis).

²⁵⁸ See, e.g., Friedman, *supra* note 21, at 959.

behest of schools, hospitals, universities, housing authorities, and other institutions.²⁵⁹

University and college administrators use their police departments to check on the welfare of students, sometimes in coordination with local police.²⁶⁰ One incident illustrates the connections between university police, local police, and the home. Kayla Love, a doctoral candidate in biochemistry at the University of Southern California (USC), had an emergency home birth on June 27, 2021, after which she called the paramedics.²⁶¹ Paramedics determined the newborn was fine, but brought Ms. Love, with her fiancé and newborn, to the USC medical center for treatment.²⁶² When the parents decided not to admit the baby but to wait until they could visit their pediatrician instead, the medical staff contacted risk management who called the Sheriff's deputies.²⁶³ Ms. Love felt that the questions from the Sheriff's deputies and doctors then became "hostile."²⁶⁴ She was asked whether she had hepatitis and about domestic abuse in the home.²⁶⁵ Whether these questions arose due to the couple's race is difficult to prove, but others have documented that Black pregnant women and mothers face discrimination and insinuation by medical professionals.²⁶⁶ She told one news outlet an officer said: "[A]s a mother . . . don't you care about your daughter? Don't you want to answer these questions and get this over with?"²⁶⁷ Even presuming that the questioning was the standard protocol or in the best interest of her newborn, the presence of police created a coercive atmosphere and made it difficult for the student to make her own choices about the health of her child and whether to disclose personal medical information.

²⁵⁹ See *infra* notes 260–326 and accompanying text.

²⁶⁰ See, e.g., UNIV. OF S. CAL. & L.A. POLICE DEP'T, AMENDMENT TO MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF LOS ANGELES AND THE UNIVERSITY OF SOUTHERN CALIFORNIA 2–4 (2009), <https://ia800902.us.archive.org/11/items/LAPDMemorandumsOfUnderstandingWithUSC/LAPD%20memorandums%20of%20understanding%20with%20USC.pdf> [<https://perma.cc/ZSR2-AJUV>] (describing authority and geographic boundaries of responsibility).

²⁶¹ Beverly White, *LA Couple Says Birth of Baby Girl Turned Hostile After Arriving at Hospital*, NBC L.A. (July 15, 2021, 7:53 PM), <https://www.nbclosangeles.com/news/local/la-couple-says-birth-of-baby-girl-turned-hostile-after-arriving-at-hospital/2638112> [<https://perma.cc/WS9U-ZQQD>].

²⁶² *Id.*

²⁶³ Christina Chkarboul, *Student Petition Condemns "Unethical" Wellness Checks*, DAILY TROJAN (Nov. 4, 2021), <https://dailytrojan.com/2021/11/04/student-petition-condemns-unethical-wellness-checks> [<https://perma.cc/K8JM-6LCS>] ("Love and Jones declined medical evaluation [other] than basic height and weight checks . . ."). In another version of the story, the doctor had law enforcement step in. See Shayla Escudero & Yusra Farzan, *Law Enforcement Ordeal Tarnishes Grad Student's Entry to Parenthood*, USC ANNENBERG MEDIA (Dec. 9, 2021, 12:42 PM), <https://www.uscannenbergmmedia.com/2021/12/09/law-enforcement-ordeal-tarnishes-grad-students-entry-to-parenthood> [<https://perma.cc/E6ZQ-6HLL>].

²⁶⁴ White, *supra* note 261.

²⁶⁵ *Id.*

²⁶⁶ See ROBERTS, *supra* note 14, at 165–66; Ocen, *supra* note 15, at 1174–75; Khiara M. Bridges, *Racial Disparities in Maternal Mortality*, 95 N.Y.U. L. REV. 1229, 1262–65 (2020).

²⁶⁷ White, *supra* note 261.

The ordeal did not end when the couple left the hospital. Instead, later that evening, LAPD officers, USC Department of Public Safety officers, and a social worker visited the Black couple's university-provided housing for a wellness check.²⁶⁸ Multiple officers and a social worker forced their way into the couple's apartment and drew firearms on the Black father.²⁶⁹ Wellness checks were performed again over the next few months.²⁷⁰ Ms. Love and her fiancé began a petition, which the USC Black Student Assembly shared, seeking termination of the "parties involved in endangering [them]."²⁷¹ The LAPD initiated a personnel complaint.²⁷² The USC Medical Center issued a statement that in cases where "there are concerns about the health and welfare of a minor . . . staff have obligations to report . . . to appropriate social welfare authorities."²⁷³

This example shows the intersection of embedded police (within both the emergency room and the university) and local police in the context of a public hospital. The hospital interaction led to local police coming to Ms. Love's home, with the permission and assistance of university police to engage in the follow-up wellness checks.²⁷⁴ Rather than protecting the student from police engagement, the university police facilitated engagement with other police that had broader criminal authority and with the local child welfare agency.²⁷⁵ University or college police operate as gatekeepers for local police to access university property and

²⁶⁸ *Statement Regarding Claims that LAPD Officers Drew Their Weapons on a Father and His New Baby*, L.A. POLICE DEP'T (July 18, 2021) [hereinafter *LAPD Statement*], <https://www.lapdonline.org/newsroom/statement-regarding-claims-that-lapd-officers-drew-their-weapons-on-a-father-and-his-new-baby-nr21185ti> [<https://perma.cc/Q3WV-SX84>]. A USC police incident log indicates that LAPD came to the student housing with Department of Child and Family Services staff. See *University of Southern California, Daily Incident Log from 6/24/2021 to 6/28/2021*, UNIV. S. CAL. DEP'T PUB. SAFETY, <http://web.archive.org/web/20210830101727/https://dps.usc.edu/files/2021/06/062821.pdf> [<https://perma.cc/2NMN-KRMU>] (incident on June 27, 2021 at 9:15 PM).

²⁶⁹ The LAPD's statement suggests the officers entered without a warrant after the child's father would not allow them to enter. See *LAPD Statement*, *supra* note 268. Ms. Love alleges that police pointed weapons at her and her newborn. See *White*, *supra* note 261.

²⁷⁰ See *White*, *supra* note 261; *Chkarboul*, *supra* note 263.

²⁷¹ *Love-Jones, Stop Endangering Families with Unethical Wellness Checks & Medical Kidnapping*, CHANGE.ORG (Sept. 12, 2021), <https://www.change.org/p/stop-endangering-families-with-unethical-wellness-checks-medical-kidnapping-lac-usc-keck-medicine-dcfs-usc> [<https://perma.cc/LH8K-ESV5>]. The LAPD said it opened a staff investigation regarding this incident. *LAPD Statement*, *supra* note 268.

²⁷² *White*, *supra* note 261.

²⁷³ *Id.*

²⁷⁴ See *Chkarboul*, *supra* note 263; *Christina Chkarboul, Emmett Fuchs & Sasha Ryu, "Care Not Cops" Rally Calls for Justice for Love*, DAILY TROJAN (Dec. 2, 2021), <https://dailytrojan.com/2021/12/02/care-not-cops-rally-calls-for-justice-for-love> [<https://perma.cc/V2HK-PXZQ>]; *Escudero & Farzan*, *supra* note 263.

²⁷⁵ See *Chkarboul*, *supra* note 263; *Chkarboul et al.*, *supra* note 274; *Escudero & Farzan*, *supra* note 263. See generally UNIV. OF S. CAL. & L.A. POLICE DEP'T, *supra* note 260.

student housing.²⁷⁶ Studies have shown that university policing disproportionately targets Black and Latinx students,²⁷⁷ furthering a sense of alienation from their peers and carrying negative educational consequences.²⁷⁸

Wellness checks and suicide hotlines in the veterans health care context have the potential to pull embedded and local police into the homes of veterans, and sometimes push veterans into health care facilities through involuntary holds or escorts to emergency departments.²⁷⁹ The VA emergency department, urgent care centers, and Veterans Suicide Crisis Line employees engage VA police when patients are in acute distress.²⁸⁰ Community mental health professionals, both inside and outside the VA, also contact the VA police to respond to distressed veteran patients.²⁸¹ Additionally, a VHA care provider may request that the VA police perform a wellness check for a patient.²⁸² In some places, either due to jurisdictional or staffing limits, the VA police will call on *local police* to engage in wellness checks of a veteran potentially in crisis.²⁸³ If state law and VA facility policy allow, VA police may temporarily detain the patient for further mental evaluations.²⁸⁴ In 2019, the Veterans Mental Evaluation Team (VMET), a collaboration between the

²⁷⁶ See SYRACUSE POLICE DEP'T & SYRACUSE UNIV. DEP'T OF PUB. SAFETY, *supra* note 40, at ¶ 13m; see also *Department FAQ*, MIT POLICE, <https://police.mit.edu/department-faq> [<https://perma.cc/T56E-7EDL>] (stating that city and state law enforcement officers do not generally come onto campus “without first sharing their intentions with MIT Police”). See generally Robert J. Cramer et al., *Suicide on College Campuses, A Public Health Framework and Case Illustration*, 70 J. AM. COLL. HEALTH 1 (2020) (describing how police and faculty on college campuses act as gatekeepers for crisis prevention programs).

²⁷⁷ See, e.g., Byongook Moon & Charles J. Corley, *Driving Across Campus: Assessing the Impact of Drivers' Race and Gender on Police Traffic Enforcement Actions*, 35 J. CRIM. JUST. 29, 34 tbl.3 (2007); Joscha Legewie et al., *Local Policing and the Educational Outcomes of Undocumented College Students*, 9 SOCIO. SCI. 406, 416–18 (2022).

²⁷⁸ See Legewie et al., *supra* note 277, at 419 tbl.3; Wei-Chin Hwang & Sharon Goto, *The Impact of Perceived Racial Discrimination on the Mental Health of Asian American and Latino College Students*, 14 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCH. 326, 330 (2008); William A. Smith, Walter R. Allen & Lynette L. Danley, “Assume the Position . . . You Fit the Description”: *Psychosocial Experiences and Racial Battle Fatigue Among African American Male College Students*, 51 AM. BEHAV. SCIENTIST 551, 551 (examining the experiences of thirty-six African American college students at five campuses); Dizon, *supra* note 215, at 420.

²⁷⁹ See, e.g., L.A. CNTY. SHERIFF'S DEP'T & L.A. CNTY. DEP'T OF MENTAL HEALTH, *supra* note 199, at 70.

²⁸⁰ *Caring for Veterans in Crisis: Ensuring a Comprehensive Health System Approach: Hearing Before H. Comm. on Veterans' Affs.*, 116th Cong. 134 (2020) [hereinafter *Caring for Veterans in Crisis*] (statement of American Federation of Government Employees, AFL-CIO). Suicide and crisis prevention is a priority for the VA due to the high number of suicides in the veteran community (between sixteen and nineteen a day). U.S. DEP'T OF VETERANS AFFS., NATIONAL VETERAN SUICIDE PREVENTION ANNUAL REPORT 9 (2022).

²⁸¹ See Kevin Herrera, *VA Police, Social Workers Team Up to Prevent Veteran Suicide*, U.S. DEP'T VETERANS AFFS. (Nov. 4, 2022), <https://www.va.gov/greater-los-angeles-health-care/stories/va-police-social-workers-team-up-to-prevent-veteran-suicide> [<https://perma.cc/M72U-HX54>].

²⁸² See *id.*

²⁸³ *Caring for Veterans in Crisis*, *supra* note 280, at 135.

²⁸⁴ *Id.*

Department of Veterans Affairs and the Los Angeles County Sheriff's Department (LASD), was called to respond to 800 veterans in crises, and 300 were placed on mental health holds.²⁸⁵

In section II.A, I discussed the literal flags on VHA patients' electronic medical records, which serve as marks that veterans carry with them whenever they interact with medical staff, even during telemedicine appointments or phone calls to schedule prescription pickups. Another flag system focused on veteran patients with a history of suicidal ideations²⁸⁶ aims to alert providers to suicide risk factors at the point of first contact.²⁸⁷ This seems like a good policy for a population with disproportionate risk of suicide,²⁸⁸ but the integration of technologies between VA police in the field and health providers at the VA²⁸⁹ risks drawing more police attention to veterans with mental disabilities when these patients are in public or in their homes.

To mitigate the potential for police violence against veterans with mental disabilities, the VA has turned to models of mental health policing rather than anticarceral strategies.²⁹⁰ Some current initiatives involve a police officer and a mental health clinician responding together to the patient after police receive a call for police service (for example, after a family member calls 911 or a veteran calls a suicide hotline).²⁹¹ Other models work with police to check in on at-risk patients. For example, the Veterans Mental Evaluations Team “proactively provide[s] outreach” to follow up on patients.²⁹² When veteran patients miss appointments, psychiatrists add them to a list of patients to be visited at home by police.²⁹³ VMET conducts outreach daily, sometimes in coordination with the LASD Risk Assessment & Management Program.²⁹⁴

²⁸⁵ L.A. CNTY. SHERIFF'S DEP'T & L.A. CNTY. DEP'T OF MENTAL HEALTH, *supra* note 199, at 116.

²⁸⁶ A suicide record flag system (different from record flags discussed in section II.A, pp. 826–39, creates special alerts and screening for veterans with medical appointments or emergency department visits. VETERANS HEALTH ADMIN., *supra* note 72, at 2.

²⁸⁷ *See id.* at 1.

²⁸⁸ The policy was updated in 2022 to allow patients to remove these suicide risk flags, VETERANS HEALTH ADMIN., U.S. DEP'T OF VETERANS AFFS., NOTICE 2022-06, INACTIVATION PROCESS FOR CATEGORY I HIGH RISK FOR SUICIDE PATIENT RECORD FLAGS 3–4 (2022), which indicates that the system may have been overinclusive. In one meeting with a group of VA social workers, one supervisor mentioned that staff needed better training to identify suicidal ideations. Meeting with VA Social Workers, in Los Angeles, CA (Sept. 2019) (on file with author). She referenced an example of a patient — a young Black single mom — who came into her clinic and told the front staff she was served with an eviction notice and felt like she couldn't take it anymore. *Id.* The supervisor was suggesting that this woman was placed on suicide alert when she actually was asking for help with her housing situation. *Id.*

²⁸⁹ *See* sources cited *infra* note 295.

²⁹⁰ *See* Patel, *supra* note 59, at 871–72.

²⁹¹ *See, e.g.,* Herrera, *supra* note 281.

²⁹² L.A. CNTY. SHERIFF'S DEP'T & L.A. CNTY. DEP'T OF MENTAL HEALTH, *supra* note 199, at 112.

²⁹³ *Id.*

²⁹⁴ *Id.* at 68–69.

To increase the VA's suicide prevention efforts, Los Angeles County recently supported a research study to integrate medical data sharing among different county agencies, law enforcement, and the VA.²⁹⁵ Integration of data will likely increase police home visits, risking criminalization and police violence. Despite the goal of responding immediately to prevent veteran suicides, solutions must balance personal and medical privacy,²⁹⁶ legal protections, human dignity, and autonomy.²⁹⁷ The risk of police violence must be taken into account as well.

It is worth interrogating one particular assumption behind the use of VA police as force multipliers for health compliance. There is a strong overlap between those who served in the military and those who serve in the VA police. As of June 2019, eighty-five percent of VA police officers identified as veterans.²⁹⁸ Many of the collaborative agreements and training programs assume veterans in crisis are more likely to identify with the VA or a police officer with a military background during the encounter. This assumption suggests the VA special response programs will improve suicide avoidance, reduce criminal behavior, and increase veteran treatment at the VA.²⁹⁹ Yet some veterans find that

²⁹⁵ See CNTY. OF L.A. BD. OF SUPERVISORS, STATEMENT OF PROCEEDINGS FOR THE REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES SEPT. 29 ¶ 22, at 31–32 (2020), https://file.lacounty.gov/SDSInter/bos/sop/1079717_092920.pdf [<https://perma.cc/5A5R-TAXS>]. As part of its efforts to develop a Los Angeles County Veteran Suicide Review Team, in September 2020, the Los Angeles County Board of Supervisors approved a feasibility analysis that included “an implementation plan and timeline for the collection of veteran data.” *Id.* Public comments were received from hundreds of individuals, the majority of whom raised concerns that shared data “among county health providers should not reach law enforcement databases.” CNTY. OF L.A. BD. OF SUPERVISORS, PUBLIC REQUEST TO ADDRESS THE BOARD OF SUPERVISORS, COUNTY OF LOS ANGELES, CALIFORNIA (2020), <https://file.lacounty.gov/SDSInter/bos/supdocs/149225.pdf> [<https://perma.cc/S46L-K8GQ>]. The Board recently adopted the Veteran Suicide Review Team (VSRT) Charter. CNTY. OF L.A. BD. OF SUPERVISORS, STATEMENT OF PROCEEDINGS FOR THE REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES MAY 17 ¶ 37, at 27 (2022), https://file.lacounty.gov/SDSInter/bos/sop/1124784_051722.pdf [<https://perma.cc/7TF8-GF79>]. The VSRT Charter discusses its data collection. Report Response from Jonathan E. Sherin, Dir., Dep’t of Mental Health, Cnty. of L.A., to Holly J. Mitchell, Supervisor, et al., L.A. Cnty. Bd. of Supervisors (2022), <https://file.lacounty.gov/SDSInter/bos/supdocs/168996.pdf> [<https://perma.cc/9B6X-W5QT>].

²⁹⁶ See KHIARA M. BRIDGES, THE POVERTY OF PRIVACY RIGHTS 13, 154–56 (2017); Kimberly D. Bailey, *Watching Me: The War on Crime, Privacy, and the State*, 47 U.C. DAVIS L. REV. 1539, 1556–57 (2014); Barbara Fedders, *The Constant and Expanding Classroom: Surveillance in K–12 Public Schools*, 97 N.C. L. REV. 1673, 1715–17 (2019).

²⁹⁷ See generally Harris, *supra* note 161, at 1681–82.

²⁹⁸ *Examining VA’s Police Force: Hearing Before the H. Subcomm. on Oversight & Investigations of the H. Comm. on Veterans’ Affs.*, 116th Cong. 19 (2019) (statement of Renee Oshinski, Acting Deputy Under Secretary for Health for Operations and Management, Veterans Health Administration, U.S. Department of Veterans Affairs).

²⁹⁹ Although research does suggest that peer support and veteran-to-veteran services are highly successful in recovery and connecting unoused veterans to housing resources, see Jeffrey Clapper, *VA Peer Support Specialists Help Veterans Develop and Implement Personal Recovery Plans*, VA NEWS (Aug. 29, 2017), <https://blogs.va.gov/vAntage/40507/va-peer-support-specialists-help->

other veterans in uniform, acting as authority figures, can be particularly triggering of their harmful and violent experiences in the military.³⁰⁰ Involving firearms in such encounters may escalate reactions and lead to further harm. More fundamentally, using police as frontline responders to situations involving the unhoused and to mental health-related concerns criminalizes these social and medical problems, even if they lead to increased compliance with care plans.

Welfare checks are also implemented through police partnerships with K–12 schools. This phenomenon can be seen across the nation. School police extending their reach into students' homes has or will likely increase with the advent of Zoom learning and technology in the classroom.³⁰¹ School Resource Officers are integrated into the school's system of checking on students, particularly for absences. In Stark County, Ohio; Salem, New Hampshire; and other jurisdictions, police visit the homes of students whom the schools designate as truants.³⁰² School police can also execute warrants to search for evidence of a crime or facilitate arrests in the student's home.³⁰³

A case study of the Stockton Unified School District showed that, during a three-month period in 2020, all police assistance requests in the

veterans-develop-and-implement-personal-recovery-plans [https://perma.cc/M6RC-8684], there is no evidence that this approach will map onto policing and it requires further study. Veterans might feel stigmatized or triggered by prior experiences of conflict, violence, or combat when they encounter VA police officers, despite their common background in the service. *See generally* Christopher M. Weaver et al., *Enhancing Services Response to Crisis Incidents Involving Veterans: A Role for Law Enforcement and Mental Health Collaboration*, 10 PSYCH. SERVS. 66, 68 (2013) (acknowledging the “unique challenges” between police and veterans at the intersection of training and tactics, noting that “many techniques . . . standard in police training, may not work or may even exacerbate a crisis situation when a veteran with PTSD is involved”).

³⁰⁰ A VA training manual for police categorizes uniform triggers as an example of a “behind the scenes” avoidance symptom. NAT'L CTR. FOR PTSD, U.S. DEP'T OF VETERANS AFFS., POSTTRAUMATIC STRESS DISORDER AND MILITARY VETERANS: TRAINING MANUAL FOR POLICE OFFICERS 14, https://www.ptsd.va.gov/professional/treat/care/toolkits/police/docs/Police_Toolkit_Instructors_Manual.pdf [https://perma.cc/MSR6-4CWX] (describing the symptom as presenting when “[a] person who was assaulted by someone in uniform avoids or refuses to talk or make eye contact with you because you are in uniform”). Of course, opinions vary. I have heard anecdotally from clients in the UCLA Veterans Legal Clinic that uniformed officers on the street and in veterans hospitals trigger abusive and traumatic experiences from prior military service. Some other veterans and unhoused residents have expressed feeling more secure when security is present due to prior experiences of abuse in congregate shelters.

³⁰¹ *See* Jaelyn Peiser, *A Black Seventh-Grader Played with a Toy Gun During a Virtual Class. His School Called the Police.*, WASH. POST (Sept. 8, 2020, 6:38 AM), https://www.washingtonpost.com/nation/2020/09/08/black-student-suspended-police-toy-gun [https://perma.cc/7LUK-FL7D]; Kathleen Foody, *When School Is Home and Home Is School, Which Rules Prevail?*, AP NEWS (Oct. 13, 2020, 3:02 AM), https://apnews.com/article/virus-outbreak-race-and-ethnicity-us-news-ap-top-news-chicago-0a5f5dfca428177c488f27f64914e5do [https://perma.cc/9C8U-V74X].

³⁰² FINN ET AL., *supra* note 4, at 15, 43, 96, 228.

³⁰³ *Id.* at 38, 43.

District sought such “welfare checks.”³⁰⁴ In the Newburgh School District, a seven-year-old boy drew a picture of a person holding what his teacher perceived to be a gun.³⁰⁵ Although a school social worker had assessed the situation and reported there were no reasons for concern, the next day, police showed up for a welfare check at the boy’s home.³⁰⁶ The child, his mother, and the social worker who reported there was no issue were all Black.³⁰⁷ Black parents in the Newburgh School District were stirred by the incident, seeing racial bias in the decision to report the seven-year-old for his drawing.³⁰⁸

The ways School Resource Officers integrate themselves into schools facilitate their role beyond the schoolhouse. School Resource Officers attempt to appear as friendly school officials. Although the objective of this friendly-officer approach is often framed as a way of improving School Resource Officers’ function as counselors, the officers use the relationships to students to improve their crime investigation and surveillance goals.³⁰⁹ In addition, School Resource Officers may actually work more closely (in proximity and job duties) to local police than their counselor duties would suggest. Professor Mae Quinn has written about School Resource Officers in Knoxville, Tennessee, “sharing office space, incident report forms, and information” with “armed police officers.”³¹⁰ She reported observing local and school police monitoring schools together and engaging in joint law enforcement investigations.³¹¹

The advancement of surveillance technology further extends school policing into the homes of children. Professor Barbara Fedders’s work on school surveillance focused attention on social media-scanning software, video cameras, and safety-management software as part of a broader school surveillance typology.³¹² As she analyzed, schools use so-called safety-management platforms to “monitor student-created

³⁰⁴ AMIR WHITAKER ET AL., ACLU OF S. CAL., NO POLICE IN SCHOOLS: A VISION FOR SAFE AND SUPPORTIVE SCHOOLS IN CA 26 (2021), https://www.aclusocal.org/sites/default/files/field_documents/no_police_in_schools_-_report_-_aclu_-_082421.pdf [https://perma.cc/6HX7-E3KR].

³⁰⁵ Lana Bellamy, “Is This 2022 or 1942?” *Black Parents Demand Accountability After Newburgh School Calls Police on 7-Year-Old Boy*, MIDDLETOWN TIMES HERALD-REC., June 19, 2022, at A1.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ Griffey, *supra* note 138. School officers often discuss their attempts to appear as another friendly adult. Some aim to be at the door of schools every morning to change the perception of police as law enforcement officials. *Id.*; see also Ethan M. Higgins et al., *School Safety or School Criminalization? The Typical Day of a School Resource Officer in the United States*, 62 BRIT. J. CRIMINOLOGY 568, 574, 577 (2022). Officers in Marietta, Ohio, even bring in therapy dogs as a way of building trust and relationships with schoolchildren. Griffey, *supra* note 138.

³¹⁰ Mae C. Quinn, *The Fallout from Our Blackboard Battlegrounds: A Call for Withdrawal and a New Way Forward*, 15 J. GENDER RACE & JUST. 541, 557 (2012).

³¹¹ *Id.*

³¹² See Fedders, *supra* note 296, at 1687–93.

content on school-issued computers, [or other devices³¹³] and school internet servers.”³¹⁴ One platform that has received some public attention is Gaggle.³¹⁵ As Fedders explains it:

These programs use natural-language processing to sift through the millions of words typed by students. . . . [S]chools that purchase this product obtain the software along with access to a team of off-site “security specialists” trained to look for an unspecified group of words deemed troubling. When . . . they are alerted that students have typed such words, company representatives contact the school, and, in some cases, law enforcement.³¹⁶

Law enforcement or school officials use this information from Gaggle to contact the family, or even visit the student’s home in person for wellness checks.³¹⁷ Other platforms in a growing educational technology sphere collect student data during the school day and at home.³¹⁸ These products, including others like GoGuardian, operate on about three million school-owned devices nationwide.³¹⁹ The COVID-19 pandemic ramped up school purchases of educational technology programs, and made families more vulnerable to these surveillance methods when the timing of in-person learning appeared uncertain.³²⁰ Schools implement

³¹³ See Simone Stolzoff, *Schools Are Using AI to Track What Students Write on Their Computers*, QUARTZ (Aug. 19, 2018), <https://qz.com/1318758/schools-are-using-ai-to-track-what-students-write-on-their-computers> [https://perma.cc/8DRT-HZWB].

³¹⁴ Fedders, *supra* note 296, at 1687.

³¹⁵ See, e.g., *id.*; Stolzoff, *supra* note 313.

³¹⁶ Fedders, *supra* note 296, at 1687; see also Corey Tutewiler, *Discipline vs. Teachable Moments: Defined*, GAGGLE, <https://web.archive.org/web/20190504160849/https://www.gaggle.net/speaks/discipline-vs-teachable-moments-defined> [https://perma.cc/4E84-XHKK].

³¹⁷ Professor Fedders identifies examples of Gaggle informing schools, police, or School Resource Officers about online student communication to initiate wellness checks. See Fedders, *supra* note 296, at 1687 n.78 (citing GAGGLE, WAUSAU SCHOOL DISTRICT: THE PRICELESS VALUE OF A STUDENT’S LIFE (2017), <https://f.hubspotusercontent40.net/hubfs/6210449/Website/Case%20Studies/Archived/gaggle-case-study-wausau.pdf> [https://perma.cc/3T2E-2LA2]; Press Release, Gaggle, A Growing Number of Districts Are Selecting Gaggle’s School Safety Solutions to Protect Their Students (Feb. 6, 2019), <https://www.gaggle.net/press/press-room/press-release/new-gaggle-customers> [https://perma.cc/X3BX-FCGZ]).

³¹⁸ Brad Hagg, *Warsaw Community Schools: How Much Is Student Safety Worth? Responding to Cries for Help*, GAGGLE, <https://web.archive.org/web/20190504201848/https://www.gaggle.net/success-stories/warsaw-community-schools> [https://perma.cc/LPM2-GDX9] (sharing the discovery of a “self-harm threat” in a student’s Gmail message, which led to a home visit by local police and a School Resource Officer); FRIDA ALIM ET AL., ELEC. FRONTIER FOUND., SPYING ON STUDENTS: SCHOOL-ISSUED DEVICES AND STUDENT PRIVACY 14–15 (2017), <https://www.eff.org/files/2017/04/13/student-privacy-report.pdf> [https://perma.cc/26RD-J6AX].

³¹⁹ Jessa Crispin, Opinion, *US Schools Gave Kids Laptops During the Pandemic. Then They Spied on Them*, THE GUARDIAN (Oct. 11, 2021, 6:23 AM), <https://www.theguardian.com/commentisfree/2021/oct/11/us-students-digital-surveillance-schools> [https://perma.cc/W9VB-S38P]; Anya Kamenetz, *Schools Turn to Software for Suicide Prevention — But Not Everyone’s On Board*, NPR (Mar. 28, 2016, 4:00 PM), <https://www.npr.org/2016/03/28/472176259/schools-turn-to-software-for-suicide-prevention-but-not-everyones-on-board> [https://perma.cc/R58R-G8MA].

³²⁰ ELIZABETH WARREN & ED MARKEY, CONSTANT SURVEILLANCE: IMPLICATIONS OF AROUND-THE-CLOCK ONLINE STUDENT ACTIVITY MONITORING 4 (2022), <https://www.warren.senate.gov/imo/media/doc/356670%20Student%20Surveillance.pdf> [https://perma.cc/72ML-

Gaggle and other surveillance technologies for the purpose of preventing teen suicides or self-harm,³²¹ cyberbullying,³²² and harassment or violence,³²³ yet it remains unclear whether these technologies have made a difference in school shootings or suicide prevention. For one, when a student becomes aware their emails or social media feeds are subject to school monitoring, the student may learn to be careful in their communication, rather than to ask for help.³²⁴ Additionally, low-income, Black, Latinx, and disabled students disproportionately use school equipment, subjecting these groups of students already more likely to experience the harmful consequences of surveillance to a higher risk of interactions with law enforcement.³²⁵

Across the country, housing authorities responsible for managing and dispensing low-income housing have embedded police departments, some with full police authority.³²⁶ Given their proximity to the housing authority complexes, the police authorities are authorized to engage in wellness checks.³²⁷ The housing authority in Cleveland has been criticized for multiple deaths at the hands of the housing authority police, one of which followed police responding to a person in distress.³²⁸

EFUS]; DEVAN L. HANKERSON ET AL., CTR. FOR DEMOCRACY & TECH., ONLINE AND OBSERVED: STUDENT PRIVACY IMPLICATIONS OF SCHOOL-ISSUED DEVICES AND STUDENT ACTIVITY MONITORING SOFTWARE 6 (2021), <https://cdt.org/wp-content/uploads/2021/09/Online-and-Observed-Student-Privacy-Implications-of-School-Issued-Devices-and-Student-Activity-Monitoring-Software.pdf> [<https://perma.cc/3D6T-ZU5K>].

³²¹ The COVID-19 pandemic substantially increased rates of suicide and depression for children and adolescents. Stephanie L. Mayne et al., *COVID-19 and Adolescent Depression and Suicide Risk Screening Outcomes*, PEDIATRICS, Sept. 2021, at 2–3.

³²² Fedders, *supra* note 296, at 1689 n.92 (citing David D. Luxton, Jennifer D. June & Jonathan M. Fairall, *Social Media and Suicide: A Public Health Perspective*, 102 AM. J. PUB. HEALTH S195, S196 (2012)).

³²³ See *id.* n.89 (citing *Can Artificial Intelligence Prevent School Violence?*, IEEE: IEEE INNOVATION AT WORK (2019), <https://innovationatwork.ieee.org/can-artificial-intelligence-prevent-school-violence> [<https://perma.cc/3949-MSKK>]).

³²⁴ See Stolzoff, *supra* note 313; see also Kamenetz, *supra* note 319.

³²⁵ See WARREN & MARKEY, *supra* note 320, at 4–5; Bailey, *supra* note 296, at 1555; Evan Enzer & Sarah Roth, *How Tech Treats Students with Disabilities Like Criminals*, DAILY BEAST (Aug. 3, 2022, 4:46 AM), <https://www.thedailybeast.com/how-school-tech-treats-students-with-disabilities-like-criminals> [<https://perma.cc/B2F6-Q4S5>].

³²⁶ Compare Press Release, Laws.’ Comm. for C.R. of the S.F. Bay Area, *Loitering Law Targeting Oakland Public Housing Residents Is Repealed* (Nov. 1, 2018), https://ccrsf.org/pressroom_posts/loitering-law-targeting-oakland-public-housing-residents-is-repealed [<https://perma.cc/T8XC-WFW9>] (“[O]fficers do not provide full-service policing to residents of [Oakland Housing Authority] property . . .”), with *CMHA Police Department*, CUYAHOGA METRO. HOUS. AUTH., <https://www.cmha.net/safety> [<https://perma.cc/B365-HKPH>] (“The Department provides policing services to CMHA residents 24 hours a day, seven days a week, year-round.”).

³²⁷ E.g., Crisis Intervention, CUYAHOGA METRO. HOUS. AUTH., *POLICIES & PROCEDURES MANUAL* ch. 3.5, <https://cms3.revize.com/revize/cuyahoga/Police%20Policy/Chapter%203.05%20-%20Crisis%20Intervention.pdf> [<https://perma.cc/WW72-5CJ6>].

³²⁸ See Matthew Richmond, *CMHA Police Shooting Video Shows Man in Distress and a Violent Struggle Before He’s Killed*, IDEASTREAM PUB. MEDIA (June 9, 2022, 1:46 PM), <https://>

In general, the practice of sending police (sometimes prophylactically) to a distressed or potentially distressed person's home is fraught with many difficult questions. Will a person respond better to a clinical provider than to the police? Is a care provider or school counselor in danger if they go to the home of a person who may have a weapon? Will police knocking on a person's door — particularly if the person is in mental health distress — increase the risk of violence to themselves or others? Some would argue that the police's coercive influence in the wellness check, especially where no arrest takes place and a person is taken to a hospital, minimizes societal harm and benefits a person in distress because they are not taken to jail.³²⁹ However, for anyone who has not yet embraced mental health treatment, the choice police present — hospitalization or jail — comes at a cost. For students in K–12 and college settings, welfare checks may cause mistrust toward teachers and adults and reduce institutional legitimacy.³³⁰ In the context of veterans health care, welfare checks in the name of protecting workers and veterans ignores the traumatizing and disabling incidents of war, poverty, and other social circumstances. In the worst-case scenario, police escalate the encounter through violence or force, contrary to the intent behind wellness checks.

www.ideastream.org/news/government-politics/2022-06-09/cmha-police-shooting-video-shows-man-in-distress-and-a-violent-struggle-before-hes-killed [<https://perma.cc/Y77R-3CWD>] (reporting on housing authority police conducting a check-in response to a man in crisis who was “throwing items off a balcony,” in which police entered the man's apartment and, after finding him naked in a bathtub, tased, and lethally shot the man following a struggle); Matthew Richmond, *No Charges for Cleveland Housing Police Officer Who Killed Arthur Keith*, IDEASTREAM PUB. MEDIA (July 7, 2021, 9:56 PM), <https://www.ideastream.org/news/no-charges-for-cleveland-housing-police-officer-who-killed-arthur-keith> [<https://perma.cc/PAE3-3J97>]; Nick Castele, *CMHA Police Release Video of Officer Fatally Shooting Man; Cleveland Police Investigating*, IDEASTREAM PUB. MEDIA (Sept. 7, 2022, 4:37 PM), <https://www.ideastream.org/news/government-politics/2022-09-07/cmha-police-release-video-of-officer-fatally-shooting-man-cleveland-police-investigating> [<https://perma.cc/6T6E-366P>]; *Friday, May 24th*, WCLE MIX 104.1 (May 24, 2019), <https://www.mymix1041.com/friday-may-24th> [<https://perma.cc/8GN5-FRUK>] (reporting that public housing officials called police to perform a welfare check upon seeing “trash, televisions, and clothing” on an apartment's front porch).

³²⁹ See Wood et al., *supra* note 169, at 83 (“In this light, current research and policy efforts may overlook the vast array of lower intensity and less formal interactions and their potential not only to prevent future arrest or transport situations but also to establish trust and build positive rapport that may pay forward to subsequent interactions. In short, it is time to take a 21st-century look at the broader context of police interactions with persons affected by mental illnesses and their implications for advancing practice in this area.”).

³³⁰ See Anya Sczerzenie, *Student Group Seeks to Take Police out of University Wellness Check Procedures*, COMMONWEALTH TIMES (Apr. 10, 2019), <https://commonwealthtimes.org/2019/04/10/student-group-seeks-to-take-police-out-of-university-wellness-check-procedures> [<https://perma.cc/GH7K-WCHQ>] (reporting on students saying that wellness checks by campus police “make students with mental illnesses, especially students of color, feel unsafe and may cause more harm than good”); Megan Reeves & Jack Evans, *Florida's Flawed Baker Act Rips Thousands of Kids from School*, TAMPA BAY TIMES (Dec. 11, 2019), <https://www.tampabay.com/news/education/2019/12/10/floridas-flawed-baker-act-rips-thousands-of-kids-from-school> [<https://perma.cc/6S94-M3NA>] (presenting incidents of police conducting mental health checks on public school students, many of which lead to commitment).

III. SURVEILLING THE PUBLIC

Police draw information from multiple institutions for their surveillance goals.³³¹ Professor David Lyon defines surveillance as “the focused, systematic and routine attention to personal details for purposes of influence, management, protection or direction.”³³² Different examples across locations demonstrate how the management aspects of this definition prevail over the protection (or care) aspects. *Networked information* connects information between and across institutions, *bureaucratic conflict and cooperation* identifies ways workers mediate police interactions with their clientele, and *vulnerable privacy* involves the legal regulation of personal private information from one institutional setting to the police.

A. *Networked Information*

Police network two-way information sharing between and into other institutions to surveil the public. Local, federal, and embedded police also share information on noncriminal actions and arrests. This networking of information increases surveillance of race-class subjugated communities. This concept is distinct from red flagging, which operates internally and leads to future criminal enforcement. We can better appreciate the scale of information-sharing capacity when we look across systems. When staff rely on police decisions to share information with them, or when police coax information from an institution, staff may not account for problems with police discretion, thereby compounding the consequences for poor people navigating multiple racialized systems and institutions. I note that several examples already discussed in this Article illustrate the policing outcomes of networking information. The example of the University of Southern California family subject to a wellness check described in section II.C³³³ and the example of Section 8 residents in Lancaster and Palmdale subjected to multiagency sweeps described in the section on red flagging³³⁴ both show the way information travels between law enforcement and civil or administrative systems.

Information sharing about primary school students occurs between school police, other law enforcement, and even other government agencies such as those entities involved in child welfare and immigration enforcement.³³⁵ A few examples illustrate these collaborations and the

³³¹ Critical surveillance studies scholars have explored this connection and tension. See generally VIRGINIA EUBANKS, *AUTOMATING INEQUALITY: HOW HIGH-TECH TOOLS PROFILE, POLICE, AND PUNISH THE POOR* (2017).

³³² DAVID LYON, *SURVEILLANCE STUDIES: AN OVERVIEW* 14 (2007).

³³³ See *supra* notes 261–75 and accompanying text.

³³⁴ See *supra* notes 127–34 and accompanying text.

³³⁵ BARBARA RAYMOND, U.S. DEP’T OF JUST., *ASSIGNING POLICE OFFICERS TO SCHOOLS* 3 (2013), <https://cops.usdoj.gov/RIC/Publications/cops-p182-pub.pdf> [<https://perma.cc/A9H9-AT6P>] (explaining that SROs provide “leads and information to the appropriate investigative units”). See generally ROBERTS, *supra* note 14.

way larger carceral motives dominate the noncarceral objectives behind tracking or monitoring certain students. In a Tampa school district, the county police department created a confidential list of over 400 middle school and high school students for monitoring those “at risk” of “fall[ing] into a life of crime.”³³⁶ To compile the list, the local sheriff’s department relied on information obtained from the school district and the Florida Department of Children and Families.³³⁷ The police manual identified certain characteristics to mark students for monitoring, including, but not limited to, getting low grades, being party to a custody dispute, having three absences in a quarter, receiving one disciplinary referral, or having witnessed traumatic events in the home.³³⁸ Pasco County, Tampa’s neighboring county, encouraged School Resource Officers to “monitor crime trends” in the community and “[p]lan home visits.”³³⁹ Body camera footage obtained by the *Tampa Bay Times* shows police engaged in aggressive arrests and coercive practices under the auspices of tracking and caring for the at-risk youth.³⁴⁰ The investigation uncovered that police would “swarm homes in the middle of the night” and repeatedly interrogate and visit the homes of children and their extended family members.³⁴¹

The example shows how problems emerge with multidirectional information sharing, here between police, child welfare agencies, and schools. Even when ostensibly for protective or care-based surveillance, as contemplated by Lyon, the disciplinary and regulatory purposes of surveillance dominate. Foster care and child protective services use information from school police (or probation) officers with consequences for families, particularly race-class subjugated families.³⁴² Information from police may shape school administrators’ and teachers’ perceptions of students.

In some states, police and school administrators justify information sharing under the rubric of supporting potential crime victims. In 2018,

³³⁶ Bedi & McGrory, *supra* note 70.

³³⁷ *Id.*

³³⁸ PASCO SHERIFF’S OFF., INTELLIGENCE-LED POLICING MANUAL 70–72 (2018), https://s3.documentcloud.org/documents/20412738/ilp_manual012918.pdf [<https://perma.cc/2SFK-SWCS>].

³³⁹ *Id.* at 66.

³⁴⁰ Neil Bedi, Kathleen McGrory & Jennifer Glenfield, *How a Florida Sheriff Harasses Families: Watch the Body-Cam Video*, TAMPA BAY TIMES (Sept. 3, 2020), <https://projects.tampabay.com/projects/2020/investigations/police-pasco-sheriff-targeted/body-cam-footage> [<https://perma.cc/D4GK-NUR4>].

³⁴¹ Kathleen McGrory & Neil Bedi, *Targeted*, TAMPA BAY TIMES (Sept. 3, 2020), <https://projects.tampabay.com/projects/2020/investigations/police-pasco-sheriff-targeted/intelligence-led-policing> [<https://perma.cc/4Z52-5QVQ>] (discussing the case of Rio, a fifteen-year-old whose home had been visited at least twenty-one times).

³⁴² See generally ROBERTS, *supra* note 14; Brianna Harvey, Josh Gupta-Kagan & Christopher Church, *Reimagining Schools’ Role Outside the Family Regulation System*, 11 COLUM. J. RACE & L. 575 (2021). School police also act as conduits of information between other schools and other administrators. Nicole L. Bracy, *Circumventing the Law: Students’ Rights in Schools with Police*, 26 J. CONTEMP. CRIM. JUST. 294, 307–08 (2010).

President Trump signed the STOP School Violence Act,³⁴³ redirecting \$75 million appropriated for evidence-based safety programs to prevent violence toward other strategies, including improving communication between law enforcement agencies and school administrators.³⁴⁴ In Minnesota, a statute requires law enforcement to notify a superintendent or principal when there is merely probable cause (not evidence of a conviction) to believe that a student committed a serious crime enumerated in the statute, or when a victim is another student or school employee and notification is necessary to protect the victim.³⁴⁵ The principal may share the information with other officials. Police also must report a student to the school's chemical abuse pre-assessment team when they have probable cause to believe a student committed a drug, drug paraphernalia, or alcohol offense.³⁴⁶

As Professor Eisha Jain has written, the mere act of a police officer disclosing a child's name to a school administrator carries the types of lasting consequences that juvenile record expungement and sealing laws seek to protect children against.³⁴⁷ The disclosure of information about a student's arrest from police to the student's school — even if the purpose is to facilitate counseling or protect a victim or witness — doesn't account for potential racially discriminatory policing decisions.³⁴⁸ Information sharing between police and school officials can thus intensify the surveillance and overpolicing of race-class subjugated families.

In addition, in some jurisdictions, School Resource Officers and their reporting procedures have been linked to the deportation of students and students' enlistment on federal gang databases.³⁴⁹ For example, in

³⁴³ Pub. L. No. 115-141, 132 Stat. 1128 (2018) (codified at 34 U.S.C. §§ 10551–10556).

³⁴⁴ Andrew Ujifusa, *President Trump Signs Spending Bill that Includes Billions More for Education*, EDUC. WK. (Mar. 23, 2018), <https://www.edweek.org/policy-politics/president-trump-signs-spending-bill-that-includes-billions-more-for-education/2018/03> [<https://perma.cc/Y94R-7K9V>]; *Student, Teachers, and Officers Preventing (STOP) School Violence Program*, BUREAU JUST. ASSISTANCE (Oct. 20, 2022), <https://bja.ojp.gov/program/stop-school-violence-program/overview> [<https://perma.cc/D84M-3EB9>].

³⁴⁵ MINN. STAT. § 260B.171(3)(a), (5)(e) (2016).

³⁴⁶ *Id.* § 121A.28.

³⁴⁷ Eisha Jain, *Arrests as Regulation*, 67 STAN. L. REV. 809, 844 (2015).

³⁴⁸ *Id.* at 860 (noting that such disclosures “magnify the effects of relatively minor policing decisions on the poor and on racial minorities, who are the most likely to be arrested”); see also John Rosiak & Emily Veysey, *School Resource Officers Navigating Information Sharing*, CMTY. POLICING DISPATCH (June 2013), https://cops.usdoj.gov/html/dispatch/06-2013/sros_and_information_sharing.asp [<https://perma.cc/NPR4-GWAE>] (promoting information sharing and collaboration between schools and police).

³⁴⁹ Emma Tynan et al., *Caught in an Educational Dragnet: How the School-to-Deportation Pipeline Harms Immigrant Youth and Youth of Color*, NAT'L IMMIGR. L. CTR. (May 19, 2022), <https://www.nilc.org/2022/05/19/caught-in-an-educational-dragnet-how-the-school-to-deportation-pipeline-harms-immigrant-youth-and-youth-of-color-the-torch> [<https://perma.cc/EDH2-PEUV>]; Laila L. Hlass, *The School to Deportation Pipeline*, 34 GA. ST. U. L. REV. 697, 698 (2018); Hannah Dreier, *How a Crackdown on MS-13 Caught Up Innocent High School Students*, N.Y. TIMES MAG. (Dec. 27, 2018), <https://www.nytimes.com/2018/12/27/magazine/ms13-deportation-ice.html> [<https://>].

Baltimore, immigration authorities detained a seventeen-year-old following a report by a School Resource Officer that the student threatened a classmate.³⁵⁰ Students in multiple schools in the Boston area were deported after public schools shared information about their actions with law enforcement agencies. A school incident report stated a student was involved in a school fight and another report suggested that the student was a member of the MS-13 gang.³⁵¹ That information was shared with local police, and eventually federal law enforcement, which used the school arrest report in its intelligence report.³⁵² Furthermore, in some jurisdictions, School Resource Officers, as sworn law enforcement officers, are able to add students to these oft-criticized gang databases.³⁵³ As one teacher in Roxbury, Massachusetts, commented, information sharing between schools and immigration authorities “will create a sense of mistrust in the school community.”³⁵⁴ Sharing information with outside law enforcement agencies — in this case immigration authorities and local police — can have dire consequences.

Universities and colleges also engage in information sharing and cooperation agreements with local and federal police.³⁵⁵ In universities, full-fledged police agencies are integrated into school discipline, behavioral intervention teams, and threat assessment teams as part of the university administration’s duties to secure campuses and maintain their safety. As discussed in section II.C, university and college police departments are called in cases of mental health distress or wellness checks for students in dormitories or other campus housing.³⁵⁶

Through its delegated authority, the VA has established guidance and directives promoting two-way information sharing with local

perma.cc/R7K9-V7NH] (“With Operation Matador, ICE found a way around these protections, by relying on police officers inside schools, known as school resource officers. They collect tips and disciplinary information from teachers and administrators and can legally share it with their departments, which can in turn pass it on to immigration agents.”).

³⁵⁰ Dreier, *supra* note 349. A federal immigration judge reviewed ICE’s decision and found that a clear error had been made. *Id.*

³⁵¹ Shannon Dooling, *What a Boston Student’s Deportation Reveals About School Police and Gang Intelligence*, WBUR (Dec. 13, 2018), <https://www.wbur.org/news/2018/12/13/east-boston-student-discipline-to-deportation> [<https://perma.cc/F56P-66DQ>]; see also Bianca Vázquez Toness, *Newly Released Records Point to Evidence that Boston Student Information Was Shared with Immigration Agency*, BOSTON.COM (Jan. 7, 2020), <https://www.boston.com/news/local-news/2020/01/07/newly-released-records-point-to-evidence-that-boston-student-information-was-shared-with-immigration-agency> [<https://perma.cc/TPS9-P9D7>].

³⁵² See Toness, *supra* note 351.

³⁵³ See Dreier, *supra* note 349. In Chicago, people have accused SROs of entering young students into the Chicago Police Department’s gang database. Sarah Karp, *Chicago Mom Accuses School Police of Labeling Her Son a Gang Member*, WBEZ CHI. (Apr. 10, 2019, 6:00 AM), <https://www.wbez.org/stories/chicago-mom-accuses-school-police-of-labeling-her-son-a-gang-member/e18087b2-64a7-4783-b8a0-d28127de5e09> [<https://perma.cc/5QXD-H5N2>].

³⁵⁴ See Toness, *supra* note 351.

³⁵⁵ See *supra* notes 39–41 and accompanying text.

³⁵⁶ See *supra* section II.C, pp. 851–61.

police.³⁵⁷ A VA directive requires VA field facilities to obtain FBI identifiers for VA police to operate the National Crime Information Center (NCIC) and the National Law Enforcement Telecommunications System, Inc. (NLETS) terminals for its investigations.³⁵⁸ Practically, this means when VA police officers obtain identity information for a patient, they may check patients through various federal and state criminal databases using FBI interoperability systems. The policy requires the VA to report the addresses of patients with open warrants to law enforcement personnel.³⁵⁹ Running identification cards or license plates to support local law enforcement to apprehend persons who have missed court appearances or failed to pay fines extends the reach of health care policing into generalized criminal regulation and traffic enforcement. In addition, it has the potential to create mistrust toward the VA as an institution.

Further, information-sharing agreements³⁶⁰ bring VA health care into local policing and local policing into VA care spaces.³⁶¹ Veterans have long been a significant number of the street homeless, particularly in large urban areas, such as Los Angeles and Seattle.³⁶² Through information-sharing agreements, local police can use a VA web-based tool to determine whether an unhoused (or any) individual they encounter has a military service record.³⁶³ There are numerous reasons to

³⁵⁷ *E.g.*, U.S. DEP'T OF VETERANS AFFS., DIRECTIVE 0730, SECURITY AND LAW ENFORCEMENT (Dec. 12, 2012).

³⁵⁸ *Id.* ¶ 2.m(1)–(2), at 8–9.

³⁵⁹ U.S. DEP'T OF VETERANS AFFS., VETERANS HEALTH ADMINISTRATION FUGITIVE FELON PROGRAM 1, 3 (Feb. 23, 2012), https://www.va.gov/vhapublications/ViewPublication.asp?pub_ID=2494 [<https://perma.cc/3VHS-82H9>].

³⁶⁰ I develop the concept of information sharing more fully elsewhere in the Article. *See infra* section III.B, pp. 868–74.

³⁶¹ Information sharing between police and public health agencies is also underway in numerous institutions with the goal of reducing “repeat utilizers” in public emergency departments. Jennifer D. Wood & Laura Beierschmitt, *Beyond Police Crisis Intervention: Moving “Upstream” to Manage Cases and Places of Behavioral Health Vulnerability*, 37 INT'L J.L. & PSYCHIATRY 439, 439, 445 (2014).

³⁶² OFF. OF CMTY. PLAN. & DEV., U.S. DEP'T OF HOUS. & URB. DEV., THE 2020 ANNUAL HOMELESSNESS ASSESSMENT REPORT (AHAR) TO CONGRESS 53 (2021), <https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf> [<https://perma.cc/PCA4-CQ89>] (reporting 37,252 homeless veterans in 2020, representing nearly eight percent of all homeless adults). Recent data indicates the cities of Los Angeles (3,456 veterans experience homelessness, representing ten percent of all homeless veterans) and Seattle (855 veterans experience homelessness, representing three percent of all homeless veterans) have the largest numbers. OFF. OF CMTY. PLAN. & DEV., U.S. DEP'T OF HOUS. & URB. DEV., THE 2022 ANNUAL HOMELESSNESS ASSESSMENT REPORT (AHAR) TO CONGRESS 67 (2022), <https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf> [<https://perma.cc/4S5V-HNC2>].

³⁶³ Local police can utilize a system called SQUARES (Status Query Exchange and Response System). *See* HAL DONAHUE ET AL., NAT'L INST. OF CORR., U.S. DEP'T OF JUST., LAW ENFORCEMENT OFFICERS RESPECTING SERVICE, RESTORING HONOR FOR VETS IN CRISIS 5 (2019), <https://s3.amazonaws.com/static.nicic.gov/UserShared/033091.pdf> [<https://perma.cc/BR5F-YQ84>] (discussing protocols “designed with the officers’ needs in mind” when bringing veterans to VA facilities for care).

search for this record. The law enforcement interest is primarily to protect police officers when interacting with veterans, whose training may be tactically superior to that of the police.³⁶⁴ The VHA and local government share an interest in redirecting veterans away from crowded public emergency departments with longer wait times³⁶⁵ to VHA emergency departments. VHA facilities include services more appropriate to the trauma or disabilities connected to military experience,³⁶⁶ and a visit may serve as a conduit for other social support in the community or medical services.³⁶⁷ Yet, as patient-centered and care-based as these goals may be, they can force marginalized veteran patients into police surveillance systems and pathways of police violence. In a nine-city study, Professors Ayobami Lanionu and Phillip Atiba Goff found persons with serious mental illness made up 17% of use of force cases and 20% of persons injured in police interactions.³⁶⁸ The researchers found “[t]he risk that persons with serious mental illness will experience police use of force is 11.6 times higher . . . than persons without serious mental illness.”³⁶⁹ Meanwhile, one in four police killing victims involve “persons experiencing mental health crises.”³⁷⁰

Understanding the intersection of police violence and mental illness should give administrative leaders pause. Embedding police or harboring a subunit of local police suggests the institution is in part responsible for incidents of police violence.

The emergency department setting is a good example of the principle that not all two-way information sharing involves technology or

³⁶⁴ See NAT’L CTR. FOR PTSD, *supra* note 300, at 13 (“Police officers are encouraged to consider Veterans as their equals, if not superiors, in terms of training on tactics, weapons, and use of deadly force.”).

³⁶⁵ Madeline Penn et al., *Comparison of Wait Times for New Patients Between the Private Sector and United States Department of Veterans Affairs Medical Centers*, 2 JAMA NETWORK OPEN, Jan. 18, 2019, at 1, 1, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2720917> [<https://perma.cc/8XC3-ERGS>] (reporting a mean wait time that was twelve days shorter than those in the private sector for outpatient appointments in certain specialties); Kevin N. Griffith et al., *Appointment Wait Times for Speciality Care in Veterans Health Administration Facilities vs Community Medical Centers*, 3 JAMA NETWORK OPEN, Aug. 26, 2020, at 1, 2, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2769826> [<https://perma.cc/8KNH-9A9F>] (finding that between 2013 and 2019, VHA facility wait times were generally lower than were wait times at community care alternatives).

³⁶⁶ David J. Shulkin, Editorial, *Why VA Health Care Is Different*, FED. PRAC., May 2016, at 9 (discussing the VA’s specialized expertise, including mental health treatment); Patel, *supra* note 59, at 813, 820.

³⁶⁷ Patel, *supra* note 59, at 819–23.

³⁶⁸ Ayobami Lanionu & Phillip Atiba Goff, *Measuring Disparities in Police Use of Force and Injury Among Persons with Serious Mental Illness*, 21 BMC PSYCHIATRY, 2021, at 1, 1, <https://doi.org/10.1186/s12888-021-03510-w> [<https://perma.cc/QAQ3-RHXN>].

³⁶⁹ *Id.*

³⁷⁰ See Fagan & Campbell, *supra* note 210, at 1007; see also Amam Z. Saleh et al., *Deaths of People with Mental Illness During Interactions with Law Enforcement*, 58 INT’L J.L. & PSYCHIATRY, 110, 110 (2018) (analyzing 2015 fatality data of police and civilian interactions compiled by the *Washington Post* and *The Guardian*, and finding twenty-three percent of civilians killed during them showed signs of mental illness).

database interoperability. Police and emergency departments are both motivated by efficiency and cost savings. In general, police want to reduce their time processing patients in hospital settings,³⁷¹ emergency department nurses and staff support reducing police time processing patients in police custody,³⁷² and emergency departments aim to divert what they call “repeat utilizers”³⁷³ and “high utilizers.”³⁷⁴ Multiple anecdotal accounts from emergency departments in different cities reveal the ways police use health settings as investigatory spaces, and medical staff, sometimes unknowingly, facilitate contractions of Fourth Amendment rights.³⁷⁵ Police record information (including names and dates of birth) about patients who are not in custody, question medical professionals to obtain information for criminal adjudication purposes, and execute warrants to make arrests in hospitals.³⁷⁶ At the same time, police provide information about patients that may affect patient care to nurses and doctors.³⁷⁷ Medical staff engage in tests and procedures at the urging of police.³⁷⁸

B. Bureaucratic Conflict and Cooperation

Bureaucratic administrators and frontline workers, sometimes called street-level bureaucrats, facilitate (through cooperation) or curtail (through conflict) police interactions with their clientele.³⁷⁹ Police operate as frontline workers, negotiating outcomes both horizontally and vertically with hospital nurses, teachers, transit workers, and public

³⁷¹ See Lara-Millán, *supra* note 16, at 879–80.

³⁷² *Id.*

³⁷³ Wood & Beierschmitt, *supra* note 361, at 439, 445.

³⁷⁴ E.g., Nadine Ehlers & Shiloh Krupar, “When Treating Patients Like Criminals Makes Sense”: *Medical Hot Spotting, Race, and Debt*, in *SUBPRIME HEALTH: DEBT AND RACE IN U.S. MEDICINE* 31, 32 (Nadine Ehlers & Leslie R. Hinkson eds., 2017).

³⁷⁵ See Ji Seon Song, *Policing the Emergency Room*, 134 HARV. L. REV. 2646, 2661–62, 2664 (2021).

³⁷⁶ See *id.* at 2650, 2661–62; Harada et al., *supra* note 32, at 745.

³⁷⁷ See Song, *supra* note 375, at 2661–63.

³⁷⁸ *Id.* at 2650–51.

³⁷⁹ I make a distinction throughout between frontline workers and backroom bureaucratic administrators. Horizontal and vertical relationships within and between the institutions discussed in this Article play a part in the regulation and management of race-class subjugated communities. Professor Michael Lipsky’s examination of several bureaucracies illustrates the ways policies (and law) that most affect marginalized populations are “made” at the ground level by frontline workers. LIPSKY, *supra* note 66, at 71–80. The nurses, teachers, police, judges, and other frontline workers in bureaucracies exercise wide discretion, but vertical relationships with clientele below and management from above also hinder their decisions. This literature reveals the management of poor people as a top-down and bottom-up process. *Id.* Lipsky is less focused on the “sideways” relationships of street-level governance and management of poor people. Sociologists such as Professor Megan Comfort focus on the horizontal interactions between bureaucratic institutions and their workforces. See SEIM, *supra* note 81, at 16; Comfort et al., *supra* note 67, at 110–11. Comfort and her coauthors identify a key feature as the “massive disconnect between institutions” governing the urban poor. *Id.* at 115; see also SEIM, *supra* note 81, at 16. Comfort and others argue that while institutions may share and cycle in and out the same clientele, they carry different and sometimes contradictory missions. See Comfort et al., *supra* note 67, at 111.

housing personnel. From above, police contend with administrators' requests to support organizational objectives or patrol certain areas,³⁸⁰ and to the frontline workers below, police act as the perceived authorities on safety and criminal behavior.³⁸¹ Police are presumed to be experts on the boundaries of legal activity; indeed, hospital workers and principals³⁸² defer to police, including for interpretations of whether privacy laws allow law enforcement access to private personal information and whether ordinary behavior is an indicator of potential or future criminal actions.³⁸³ Understanding these dynamics shows that other frontline workers are not merely passive participants in the carceral influence of police over institutions. With agency, frontline staff carry the potential for advocacy on behalf of their clientele and foment the possibilities for nonpolicing ways to address safety in the workplace.

Frontline workers within formal institutions may enable criminalization and police overreach. Professors Harada, Lara-Millán, and Chalwell's qualitative research suggests health care workers are complicit in improper police investigations or privacy violations by failing to intervene or by accepting the authority of police.³⁸⁴ Some frontline

³⁸⁰ School Resource Officers complain principals want them to “monitor . . . the restroom” or “stand in the lobby and walk the halls.” Lynn M. Barnes, *Keeping the Peace and Controlling Crime: What School Resource Officers Want School Personnel to Know*, 89 CLEARING HOUSE 197, 199 (2016); see also Higgins et al., *supra* note 309, at 574; Trisha Rhodes, *School Resource Officer Perceptions and Correlates of Work Roles*, 13 POLICING 498, 500 (2019).

³⁸¹ I am drawing from the work of Professor Josh Seim, a sociologist, who adopts a “labor-centric approach” in developing a framework for understanding both the vertical and horizontal relationships between institutions of care and penalty. SEIM, *supra* note 81, at 17–18. His work centers EMT workers. See *id.* at 19–20, 20 fig.3. Seim describes police as “usually hav[ing] the tools to successfully pressure [EMT] crews” (such as ordering psychiatric holds or applying pressure “with a jail-or-hospital ultimatum”), leading crews to “feel generally powerless in relation to the cops,” but also “hav[ing] some power to determine how they shuffle [people] onto nurses.” *Id.* at 121–22. EMT workers negotiate the movement of poor people between emergency department staff and police who act as functional gatekeepers between the streets, jails, and emergency departments. *Id.* at 16. This Article presents a similar claim. To varying degrees, other frontline workers play similar gatekeeping roles. See generally PAIK, *supra* note 18; Elizabeth Chiarello, *The War on Drugs Comes to the Pharmacy Counter: Frontline Work in the Shadow of Discrepant Institutional Logics*, 40 L. & SOC. INQ. 86 (2015); Beckett & Murakawa, *supra* note 17; Ji Seon Song, *Patient or Prisoner*, 92 GEO. WASH. L. REV. (forthcoming 2024) (on file with the Harvard Law School Library); Osagie K. Obasogie & Anna Zaret, *Medical Professionals, Excessive Force, and the Fourth Amendment*, 109 CALIF. L. REV. 1 (2021); Montes et al., *supra* note 32.

³⁸² See Griffey, *supra* note 138 (“The principals, they can depend on someone being there. They have a lot of questions about the criminal side of it, ‘What can I do with this child?’”).

³⁸³ HIPAA, FERPA, and other privacy laws are complex, and in the rushed circumstances of a school fight or emergency department visit, frontline workers may be unable to take the time to engage in the necessary analysis to determine whether sharing information with law enforcement violates patient or student privacy rights. In such situations, staff are inclined to defer to the on-site police. See *infra* section III.C, pp. 874–82.

³⁸⁴ See Harada et al., *supra* note 32, at 745 (“I think one of the issues is that there’s an intimidation factor. The police officer is telling you to give them something. It’s hard to say no to a police officer. I think that doctors, nurses, techs — I think everybody is subject to this and [police officers]

workers see police as their colleagues collaborating to serve the educational or care needs of the clientele; others see them as a necessary evil or even as adjuncts to local police, serving as sources of additional resources.³⁸⁵ In the worst of situations, workers may cover up or exaggerate the statements or actions of clientele to protect themselves and/or their colleagues, or obscure police officers' misdeeds or violence.³⁸⁶ In K-12 schools, the presence of School Resource Officers has "created ambiguity" around addressing behaviors of children and adolescents that would have traditionally been handled by teachers or a parent conference with the principal.³⁸⁷ Teachers are unclear on when to defer to school police, and sometimes prefer to direct particularly challenging children to the School Resource Officers.³⁸⁸

Interactions between bureaucratic workers like police, nurses, and teachers are also subject to conflict. Police do not always see eye to eye with other bureaucratic frontline workers, and these workers may not

will ask you for information."); Hannah J. Janeway et al., *An Ethical, Legal, and Structural Framework for Law Enforcement in the Emergency Department*, 78 ANNALS EMERGENCY MED. 749, 751 (2021) ("By uncritically accepting routine police presence and practice in health care settings, we perpetuate harms on the very populations that rely on us for their health and well-being.").

³⁸⁵ See Harada et al., *supra* note 32, at 741-46; Montes et al., *supra* note 32, at 1557; Stephen Orbanek, *Temple University Police Department and Philadelphia Police Department Announce New Agreement*, TEMPLE NOW (Mar. 2, 2023), <https://news.temple.edu/news/2023-03-02/temple-university-police-department-and-philadelphia-police-department-announce-new> [<https://perma.cc/4PGW-CPAR>] (reporting on the Philadelphia Police Department providing additional resources, in the form of citywide supplemental patrols, to the Temple University Police Department). Police, in this light, could be seen as an additional "public good" and resource provided by the schools to the less wealthy surrounding areas. See Tracey L. Meares, *Synthesizing Narratives of Policing and Making a Case for Policing as a Public Good*, 63 ST. LOUIS U. L.J. 553, 560-63 (2019); Tracey Meares & Gwen Prowse, *Policing as Public Good: Reflecting on the Term "To Protect and Serve" as Dialogues of Abolition*, 73 FLA. L. REV. 1, 21 (2021).

³⁸⁶ *Examining VA's Police Force: Hearing Before the H. Subcomm. on Oversight & Investigations of the H. Comm. on Veterans' Affs.*, *supra* note 298, at 11-12 (statement of Rep. Kathleen M. Rice) (relaying an incident among a veteran seeking medical assistance, a frontline worker, and VA police, which resulted in further injury to the veteran, along with medical records that were "improperly accessed" and in which information was added that "was factually incorrect" concerning the encounter); D'Ann Lawrence White, *VA Police Officer Heads to Prison for Violating Veteran's Rights*, PATCH (July 14, 2020, 5:56 PM), <https://patch.com/florida/largo/va-police-officer-heads-prison-violating-veterans-rights> [<https://perma.cc/T459-MRK5>] ("Nicholson then authored two arrest affidavits and a police report in which he made numerous false statements regarding the incident. Specifically, Nicholson stated that the veteran 'refused to leave the property . . . became resistant . . . pulled away . . . raised his hand in an aggressive posture . . . did not obey commands to stop resisting . . . resisted on the ground . . . and buckled his knees in an attempt to make himself dead weight.' Those statements were false and were made to influence the United States Department of Veterans Affairs . . ."); *ABC News World Tonight with David Muir, New Arrests in Inmate Death; Three Hospital Workers Charged with Murder* (ABC television broadcast Mar. 16, 2023) (reporting that after in-custody mental health hospital patient died, deputies and hospital workers covered up death, including "when hospital staff called 911, they suggested it was cardiac arrest"); *ABC News World Tonight with David Muir, Video of Police Custody Death, Footage Captures Final Moments of Irvo Otieno's Life* (ABC television broadcast Mar. 23, 2023) (indicating the cause of death was asphyxiation, not cardiac arrest).

³⁸⁷ Montes et al., *supra* note 32, at 1552, 1554.

³⁸⁸ *Id.* at 1554.

agree with police involvement, or may find police roles in tension with organizational missions.³⁸⁹ Other frontline workers view police as part of a multipronged approach to safety.³⁹⁰ In the K-12 context, a report from the Department of Justice Office of Community Oriented Policing Services discusses an example of a police officer who “once had to threaten to arrest a principal for interfering with a police officer in the performance of his duty when the administrator was physically barring [the police officer] from arresting a student.”³⁹¹ More recently, a wave of teachers’ unions have joined calls to defund or remove police from schools.³⁹² These actions suggest school officials and teachers recognize their job may include protecting students and a school’s educational mission from law enforcement interference.³⁹³ School police sometimes mediate whether a child should receive an arrest, school discipline, or disability accommodations. Proximity to school hallways and classrooms allow School Resource Officers to utilize their police discretion to formally punish subcriminal behavior in schools when police make a direct observation of the action.³⁹⁴

Conflict may also arise between health care workers and police over their differing roles and values when managing disruptive patient behavior. In overcrowded emergency departments, police expect nurses to prioritize someone in police custody or on an involuntary hold, yet triage nurses may view the incoming patient as a low priority.³⁹⁵ Medical workers sometimes view their ethical obligations or the Hippocratic

³⁸⁹ See *id.* at 1554–55 (explaining that conflicting goals between police on one hand and teachers and school administrators on the other often produce tensions).

³⁹⁰ See Janet Moore, *Metro Transit: Crime in 2022 on Board Trains, Buses Increased by Half over Previous Year*, STARTRIBUNE (Jan. 18, 2023, 6:54 PM) <https://www.startribune.com/metro-transit-crime-in-2022-on-board-trains-buses-increased-by-half-over-previous-year/600244564> [<https://perma.cc/PE2X-QXHK>] (transit police chief commenting that police are not going to solve the problems alone and advocating for social services as well).

³⁹¹ FINN ET AL., *supra* note 4, at 51.

³⁹² See, e.g., Sonali Kohli, *Eliminate School Police, L.A. Teachers Union Leaders Say*, L.A. TIMES (June 8, 2020, 7:17 PM), <https://www.latimes.com/california/story/2020-06-08/defund-school-police-utla-blm> [<https://perma.cc/H55P-C6EM>]; *Local Unions Supporting the Movement for Police-Free Schools & Reinvestment in Our Students*, NAT’L EDUC. ASS’N EDJUSTICE, <https://web.archive.org/web/20220528045114/https://neaedjustice.org/local-unions-supporting-the-movement-for-police-free-schools-reinvestment-in-our-students> [<https://perma.cc/HHA5-7HHU>].

³⁹³ Ample studies and literature point to the ways School Resource Officers muddle the roles of teachers in discipline. E.g., Montes et al., *supra* note 32, at 1547. One commentor discusses the potential frustration for an officer who observes a fight on campus, but where a principal expresses “resistance” to an arrest and charges. STEVEN CLARK, *THE ROLE OF LAW ENFORCEMENT IN SCHOOLS: THE VIRGINIA EXPERIENCE — A PRACTITIONER REPORT*, NEW DIRECTIONS FOR YOUTH DEV. 89, 91 (2011). The circumstances are complicated: “To defy the principal would seriously jeopardize their important relationship.” *Id.* And yet “the SRO may resent what seems . . . to be interference by a school administrator in a police matter.” *Id.*

³⁹⁴ See Higgins et al., *supra* note 309, at 576–78; Fisher & Hennessy, *supra* note 138, at 218–19.

³⁹⁵ See, e.g., SEIM, *supra* note 81, at 116–19.

Oath as in conflict with police requests.³⁹⁶ One Salt Lake City police officer was terminated after wrongfully arresting, grabbing, and dragging a nurse out of the University of Utah Hospital when she would not allow him to illegally draw blood from an unconscious patient.³⁹⁷ VHA police have noted that front desk staff may overutilize police to handle “customer service” concerns.³⁹⁸

When it comes to transit policing, conflict between police and front-line workers may emerge due to the role of police in order maintenance. A bus driver in Seattle confronted a transit officer for permitting houseless riders to remain on the bus.³⁹⁹ Presumably the driver would have preferred the officer arrest or remove unhoused riders he characterized as nonpaying “sleepers,”⁴⁰⁰ and perhaps the officer did not see removing the passengers as their role. Bus drivers made history in cities such as Minneapolis and New York when they refused to transport police and arrestees after the George Floyd protests in the summer of 2020.⁴⁰¹ Transit workers and unions have a complicated relationship with police but generally support more security and in-house police departments to protect members.⁴⁰²

³⁹⁶ See Eileen F. Baker et al., *Law Enforcement and Emergency Medicine: An Ethical Analysis*, 68 ANNALS EMERGENCY MED. 599, 602–03 (2016) (exploring ethical considerations surrounding emergency physicians’ “public health duties” and “public safety duties”); Leah C. Tatebe et al., *Walk the Line: An Ethical Framework for Interactions with Law Enforcement in Trauma Care Environments*, 94 J. TRAUMA CARE & ACUTE CARE SURGERY e20, e20 (2023) (“There are cases where law enforcement oversteps bounds in the name of investigation priority, potentially violating patient and staff rights. Similarly, there are times where unfavorable assumptions about [law enforcement officers] by healthcare staff can create unnecessary barriers to investigation.”). See generally Elizabeth Chiarello, *Law, Morality, and Health Care Professionals: A Multilevel Framework*, 15 ANN. REV. L. & SOC. SCI. 117, 126 (2019).

³⁹⁷ German Lopez, *A Utah Cop Manhandled and Arrested a Nurse Because She Didn’t Let Him Break the Law. Now He’s Fired.*, VOX (Oct. 11, 2017, 9:45 AM), <https://www.vox.com/2017/9/11/16239898/utah-police-nurse-video> [<https://perma.cc/HQC2-SKZ5>].

³⁹⁸ OFF. OF INSPECTOR GEN., *supra* note 77, at 10.

³⁹⁹ Eric M. Johnson, *Deputies Fired for Falsely Accusing Seattle Bus Driver of Profanity*, REUTERS (Aug. 25, 2015, 5:16 PM), <https://www.reuters.com/article/us-usa-police-washington/deputies-fired-for-falsely-accusing-seattle-bus-driver-of-profanity-idUSKCN0QU2HW20150825> [<https://perma.cc/G57Z-DD7P>].

⁴⁰⁰ *Id.*

⁴⁰¹ Gersh Kuntzman, *MTA Bus Driver Refuses to Help Cops Haul Off Anti-brutality Protesters*, STREETS BLOG NYC (May 29, 2020, 11:53 PM), <https://nyc.streetsblog.org/2020/05/29/mta-bus-driver-refuses-to-help-cops-haul-off-anti-brutality-protesters> [<https://perma.cc/24SW-SSPZ>]; Madeleine Carlisle, *Bus Drivers in Minneapolis and New York City Have Refused to Help with Police Transportation*, TIME (May 30, 2020, 5:28 PM), <https://time.com/5845451/bus-drivers-protesters-police-george-floyd> [<https://perma.cc/8789-WK2J>].

⁴⁰² *Transit Union Blasts Metro for Lack of Employee Protection Following Recent Shootings*, ABC7 NEWS (Feb. 1, 2023, 4:42 PM), <https://wjla.com/news/local/amalgamated-transit-union-blasts-metro-shootings-potomac-avenue-station-operator-dead-killed-protection-safety-john-costa-president-workers-violence-washington-dc-baltimore-virginia-us-department-of-transportation-pete-buttigieg-robert-cunningham> [<https://perma.cc/V6QF-UPBB>] (D.C. Metro); Fran Spielman & Josephine Stratman, *CTA Union Leader Demands Return of Conductors and CTA’s Own Police*

Bureaucratic administrators promote and normalize policing for their own institutional motives. Across institutions, bureaucratic administrators understand the importance of good relationships with law enforcement agencies.⁴⁰³ Police are the agents of certain bureaucratic sanctions: they evict tenants,⁴⁰⁴ stand watch over suicidal patients (in some hospitals),⁴⁰⁵ transport truants back to schools,⁴⁰⁶ and ensure transit riders pay their fares.⁴⁰⁷ Administrators in white institutional spaces rely on the police to protect the predominantly white clientele and staff from surrounding urban (Black and brown) environments.⁴⁰⁸

Additionally, administrators may use police as a quick fix to avoid litigation and workers' compensation claims from frontline workers. Police can serve as a potential shield against liability following a violent

Unit to Combat Crime Surge, CHI. SUN-TIMES (Mar. 9, 2022, 1:25 PM), <https://chicago.suntimes.com/2022/3/9/22969068/cta-crime-security-safety-chicago-transit-union-conductors-police-brown-lightfoot-red-line-shooting> [<https://perma.cc/DDR4-VTY8>] (Chicago). Skeptics of increased police presence in transit call for more housing, outreach, and fare-justice programs to cure socioeconomic vulnerabilities. See, e.g., Sam McCann & Aaron Stagoff-Belfort, *More Police Won't Make Public Transit Safer. Housing and Social Services Will*, VERA INST. OF JUST. (June 17, 2022), <https://www.vera.org/news/more-police-wont-make-public-transit-safer-housing-and-social-services-will> [<https://perma.cc/5S2W-QMQQ>] (New York City).

⁴⁰³ See Keith Graves, *An Officer's Guide for Investigations Involving Public Housing Authorities*, FBI L. ENF'T BULL., Dec. 2002, at 8, 9–10, <https://leb.fbi.gov/file-repository/archives/deco2leb.pdf/view> [<https://perma.cc/N72F-L7LZ>] (describing the importance of good relationships between local public housing authorities and police to enforce lease provisions and eviction orders); *NY School District Offers Remote Learning Due to Gun Violence, Not Coronavirus*, FOX 5 N.Y. (Nov. 24, 2021, 7:22 AM), <https://www.fox5ny.com/news/ny-school-district-offers-remote-learning-due-to-gun-violence-not-coronavirus> [<https://perma.cc/6P82-CNHG>] (reporting on a statement by the school district that it is “fortunate to have a good working relationship with local law enforcement and various community agencies in the district municipalities and Orange County”); Ilene Haluska, *Up and Running Huntington Community Schools*, HERALD-PRESS (Aug. 20, 2022), https://www.h-online.com/news/up-and-running-huntington-community-schools/article_68a90769-0531-50f2-83e1-3d2383d4f490.html [<https://perma.cc/CFK7-FCPE>] (reporting on a statement by a local school district superintendent that his “[n]o. 1 goal each and every day is the safety of staff and students” and “[h]aving a good local relationship with law enforcement is vital” to this goal); Christina Popik, *Corrupt Clubhouse*, QUINNIPIAC CHRON. (Jan. 29, 2019), <https://quchronicle.com/65966/news/corrupt-clubhouse> [<https://perma.cc/8UWP-P3LC>] (reporting on a statement by Quinnipiac University's Associate Vice President for Public Relations that “[t]he university values the excellent relationship it has with the Hamden Police Department”); Dennis Yusko, *College Urged to Teach a Lesson*, TIMES UNION (Albany, N.Y.), Sept. 3, 2008, at D1 (reporting on statement by a college's director of community relations, following an alleged assault by a student against a police officer, that “Skidmore values its positive relationship with the city”); Julie Marquis, *200 Health Professionals Hear Advice on Dealing with Violence*, PRESS-ENTER. (Riverside, C.A.), Mar. 12, 1993, at B3 (reporting on a statement by the Chair of the Department of Emergency Medicine at the White Memorial Hospital in East Los Angeles that “it is important for hospitals to maintain a good relationship with police in the community”).

⁴⁰⁴ See, e.g., Graves, *supra* note 403, at 8.

⁴⁰⁵ See, e.g., VETERANS HEALTH ADMIN., *supra* note 72, at 2.

⁴⁰⁶ See, e.g., FINN ET AL., *supra* note 4, at 95.

⁴⁰⁷ See, e.g., Carter & Johnson, *supra* note 250, at 2.

⁴⁰⁸ See *supra* note 168 (collecting sources on racial territoriality and racialized borders).

or potentially unwieldy situation with “difficult” clientele⁴⁰⁹: for example, a transit rider who fails to pay their fare, or an upset patient who threatens a technician after receiving bad test results. Police intervention protects administrators from potential litigation on the part of the transit worker or technician for unsafe working conditions.⁴¹⁰ Even when the circumstances may not warrant police intervention, or the frontline workers are trained in de-escalation or sit behind thick bullet-proof barriers, backroom bureaucratic administrators prefer police over other alternatives.

The insights of bureaucratic cooperation and conflict vis-à-vis police and other frontline workers raise a few larger questions worth examining in future projects. Due to their legal power and presumed expertise, do police carry influence over other frontline workers in a distinctive manner when compared to other bureaucratic workers? Professors Josh Seim and Armando Lara-Millán suggest this is the case with police and health care workers.⁴¹¹ Further, if other frontline workers were equipped with more legal knowledge, would they remain deferential to police and thereby become complicit in the overinvolvement of police in the lives of their clientele? Finally, in what ways has police presence within formal institutions normalized the use of both police to address disruptions or out-of-the-norm behavior, and frontline workers to facilitate police investigations? Understanding these dynamics shows that other frontline workers are not merely passive participants in the carceral influence of police over institutions.

C. Vulnerable Privacy

Institution-specific privacy laws protect personal private information contained within institutional records in every setting discussed in this Article other than mass transit, where state law has stepped in to fill that void,⁴¹² and public housing, where the Privacy Act of 1974⁴¹³ governs. Yet across institutions, law enforcement carve-outs in privacy laws render personal private information vulnerable to disclosures and enable the information sharing already discussed.

⁴⁰⁹ Colleen Wilson, *Lawsuit Details Assaults by “Belligerent, Argumentative” NJ Transit Riders on 14 Workers*, NORTHJERSEY.COM (July 14, 2022, 2:36 PM), <https://www.northjersey.com/story/news/transportation/2022/07/14/nj-transit-lawsuit-employee-assaults-train-safety/65373075007> [<https://perma.cc/TAE9-VCZT>] (“In many of the instances outlined in court documents, the crew members allege there were no police present on the trains or at the stations and said they had to wait for transit police and local police to arrive in order to apprehend unruly customers — some of whom were carrying weapons . . .”).

⁴¹⁰ See, e.g., *id.*

⁴¹¹ See SEIM, *supra* note 81, at 119 (describing the influence of police over ambulance crew); LARA-MILLÁN, *supra* note 16, at 880–81 (describing how police practices alter the way hospital staff treat patients).

⁴¹² See *infra* notes 416–24 and accompanying text.

⁴¹³ 5 U.S.C. § 552a.

In addition to having formal carve-outs that permit sharing with police, privacy laws can't account for the practical side of institutional life. The fast-paced nature of service provision or the sometimes-crushing caseloads of frontline workers make it difficult to consult with supervisors, advocates, or legal experts for guidance on how to interpret vague areas of privacy law. The law assumes the existence of moral and altruistic government employees⁴¹⁴ with the capacity and time to understand complicated legal provisions such as when to disclose private information to police. Privacy law fails to account for the relationships and negotiations that take place between frontline bureaucratic workers discussed in the previous Part. And law has yet to entirely catch up with rapidly developing technologies, like facial recognition software⁴¹⁵ and online learning tools.

Privacy law regulating mobility information for mass transit riders is an emerging area of law and policy.⁴¹⁶ Several states have enacted legislation to protect riders' data from security breaches and unauthorized third-party private vendors that are used to collect fares — these laws generally make exceptions for law enforcement, although they attempt to establish guidelines for sharing information to protect riders.⁴¹⁷ For example, Massachusetts enacted legislation in 2020 to modernize and expand its state transportation system.⁴¹⁸ It included specific provisions related to fare evasions and confidentiality over the personal data that the transit system obtains as part of fare collection.⁴¹⁹ It provides that “fare collection data, if available, may be provided to a representative of the [transit] authority's police force only in situations involving: (i) a probable cause warrant signed by a judge; or (ii) exigent circumstances that would render it impracticable to obtain a warrant

⁴¹⁴ See LIPSKY, *supra* note 66, at 72.

⁴¹⁵ Lola Fadulu, *Facial Recognition Technology in Public Housing Prompts Backlash*, N.Y. TIMES (Sept. 24, 2019), <https://www.nytimes.com/2019/09/24/us/politics/facial-recognition-technology-housing.html> [<https://perma.cc/YB3S-HMJ7>] (discussing privacy concerns in the context of security cameras that are used on public housing units and available to the Detroit Police Department).

⁴¹⁶ The emergence of fare collection systems that utilize third-party private companies has raised privacy concerns due to the significant increase in personal data generated and collected by transit agencies and their private vendors. TOM PERA, TRANSITCENTER, DO NOT TRACK: A GUIDE TO DATA PRIVACY FOR NEW TRANSIT FARE MEDIA 10 (2021), https://transitcenter.org/wp-content/uploads/2021/03/DoNotTrack_RGB_interactive-1.pdf [<https://perma.cc/784W-8MNL>].

⁴¹⁷ For example, California added protection for transit fare collection systems in 2013. CAL. STS. & HIGH. CODE § 31490(e) (West 2013) (“A transportation agency may make personally identifiable information of a person available to a law enforcement agency only pursuant to a search warrant. Absent a provision in the search warrant to the contrary, the law enforcement agency shall immediately, but in any event within no more than five days, notify the person that his or her records have been obtained and shall provide the person with a copy of the search warrant and the identity of the law enforcement agency or peace officer to whom the records were provided.”). Massachusetts makes fare collection data available to police only pursuant to a warrant or in exigent circumstances. MASS. GEN. LAWS ANN. ch. 161A, § 5(s) (West 2022).

⁴¹⁸ MASS. GEN. LAWS ANN. ch. 161A, § 5(s).

⁴¹⁹ *Id.*

pursuant to state and federal law.”⁴²⁰ Given the nature of mass transit, where individuals are quite literally in transit, there will nearly always be an exigent circumstance.⁴²¹ Other states disallow sharing personal identifying information with police (absent a warrant) but have excluded photographic or video footage from the definition of “personally identifiable information,”⁴²² which allows for broader sharing of often grainy and unreliable security footage. I do not mean to overstate the information-sharing problem with transit. Ultimately, the physical presence of police patrolling transit systems is what drives violent and often racialized policing.⁴²³ At the same time, vulnerability around private movement information compounds the effect of police presence.⁴²⁴

Practically and textually, the Health Insurance Portability and Accountability Act of 1996⁴²⁵ (HIPAA) is a weak shield for poor and marginalized emergency-department or Veterans Healthcare Administration (VHA) patients. While its conception and goals include protecting patients’ health information,⁴²⁶ medical ethics pertaining to patient privacy according to the American Medical Association conceptualize privacy more broadly to include “personal space (physical privacy), personal data (informational privacy), personal choices including cultural and religious affiliations (decisional privacy), and personal relationships with family members and other intimates (associational privacy).”⁴²⁷ Yet law enforcement exceptions within these same ethical

⁴²⁰ *Id.*

⁴²¹ Public transportation inherently involves both “ready mobility” and a reduced expectation of privacy. See *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) (per curiam) (“Our first cases establishing the automobile exception to the Fourth Amendment’s warrant requirement were based on the automobile’s ‘ready mobility,’ an exigency sufficient to excuse failure to obtain a search warrant once probable cause to conduct the search is clear. More recent cases provide a further justification: the individual’s reduced expectation of privacy in an automobile, owing to its pervasive regulation.” (citations omitted) (citing *California v. Carney*, 471 U.S. 386, 390–91 (1985); *Carroll v. United States*, 267 U.S. 132, 153 (1925)); *Carney*, 471 U.S. at 407 (Stevens, J., dissenting) (“In my opinion, searches of places that regularly accommodate a wide range of private human activity are fundamentally different from searches of automobiles which primarily serve a public transportation function.” (footnote omitted) (citing *Cardwell v. Lewis*, 417 U.S. 583, 590 (1974) (plurality opinion))).

⁴²² STS. & HIGH. § 31490(o) (West 2013) (“[W]ith respect to electronic transit fare collection systems, ‘personally identifiable information’ does not include photographic or video footage.”).

⁴²³ CHRIS VAN EYKEN, TRANSITCENTER, SAFETY FOR ALL 5 (2021), <https://transitcenter.org/wp-content/uploads/2021/07/SafetyForAll.pdf> [<https://perma.cc/FHK7-XTVS>] (“[P]olice response to ‘code of conduct’ issues like putting feet on seats, eating food, or not paying the fare is consistently discriminatory against Black and brown riders and regularly escalates into incidents of brutality.”).

⁴²⁴ *Id.* at 21.

⁴²⁵ Pub. L. No. 104-191, 110 Stat. 1936 (codified as amended in scattered sections of the U.S. Code).

⁴²⁶ See 45 C.F.R. § 160.103 (defining “health information”).

⁴²⁷ *Privacy in Health Care: Code of Medical Ethics Opinion 3.1.1*, AM. MED. ASS’N, <https://code-medical-ethics.ama-assn.org/ethics-opinions/privacy-health-care> [<https://perma.cc/9LB8-67AD>].

frameworks can facilitate access to information in certain situations.⁴²⁸ The general public may be most familiar with the circumstances of child neglect or abuse or intimate partner violence, but the following are other circumstances in which law enforcement may access personal health information⁴²⁹: when an EMT, school social workers, housing authority staff, or other workers in formal institutions respond to off-site medical emergencies and need to alert law enforcement to a criminal activity;⁴³⁰ in response to a request to identify or locate a “suspect, fugitive, material witness, or missing person”;⁴³¹ and to comply with a court order, warrant, subpoena, summons, or administrative request.⁴³² These exceptions are codified with certain limits to “basic demographic and health information” or where there exists “serious and imminent threat” (not all threats to safety).⁴³³

Others have illustrated the practical trouble for medical professionals interacting with law enforcement.⁴³⁴ First, HIPAA’s law enforcement exception is difficult to interpret and requires time-consuming analysis, which is frequently not possible or timely in an emergent situation in a health care ward.⁴³⁵ Second, as discussed in the prior section, police and health care workers often work as colleagues sharing a similar objective.⁴³⁶ Health professionals, particularly emergency-department nurses, may view themselves as facilitating and helping

⁴²⁸ Wendi Campbell Rogaliner et al., *Health Care Providers Balance Patient Rights and Law Enforcement Authority in the Hospital Setting*, 11 J. HEALTH & LIFE SCIS. L., June 2018, at 42, 54–57.

⁴²⁹ Exceptions to HIPAA are designed to balance personal privacy with law enforcement functions. See generally *Disclosures for Law Enforcement Purposes*, U.S. DEP’T HEALTH & HUM. SERVS.: HEALTH INFO. PRIV., <https://www.hhs.gov/hipaa/for-professionals/faq/disclosures-for-law-enforcement-purposes/index.html> [<https://perma.cc/D8KB-7VDR>] (detailing circumstances in which law enforcement needs might outweigh privacy concerns); Bianca Valdez, Comment, *Everyone Bleeds Guilty: Blood Draws for Law Enforcement Purposes in Light of the HIPAA Privacy Rule and Recent Supreme Court Decisions*, 52 UIC J. MARSHALL L. REV. 489, 490 (2019) (explaining how medical professionals balance HIPAA duties and their duty to assist law enforcement personnel in blood draws for drunk driving).

⁴³⁰ 45 C.F.R. § 164.512(f)(6) (2021).

⁴³¹ *Id.* § 164.512(f)(2) (noting some limits to disclosures).

⁴³² *Id.* § 164.512(f)(1)(ii)(A)–(B) (court orders, warrants, subpoenas, and summonses); *id.* § 164.512(f)(1)(ii)(C) (allowing administrative requests sometimes without judicial involvement).

⁴³³ *Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule: A Guide for Law Enforcement*, U.S. DEP’T OF HEALTH & HUM. SERVS. & U.S. DEP’T OF JUST., https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/final_hipaa_guide_law_enforcement.pdf [<https://perma.cc/J2U5-F5ZW>].

⁴³⁴ See, e.g., Valdez, *supra* note 429, at 490.

⁴³⁵ See Song, *supra* note 375, at 2708; Paul M. Jones et al., *Law Enforcement Interviews of Hospital Patients: A Conundrum for Clinicians*, 295 JAMA 822, 823 (2006); Rogaliner et al., *supra* note 428, at 54–57.

⁴³⁶ See *supra* section III.B, pp. 868–74.

other frontline bureaucratic professionals.⁴³⁷ Third, patients who are also criminal suspects or red-flagged are likely treated differently due to bias, and health professionals may therefore consider such patients' information as less worthy of protection.⁴³⁸ Fourth, in circumstances in which a clinician relies on local police details — or the Veterans Affairs Police Department in circumstances of the VHA — for their personal safety, it is difficult to deny officers access to information where HIPAA offers discretion.⁴³⁹ Finally, poor and medically vulnerable patients may not be in positions to self-advocate with police — whether in the community, a shelter, or a hospital examination room.⁴⁴⁰ Patient advocates within health care institutions are not always present or alerted when situations between police and a patient emerge; or they may have many roles competing for their time and attention.⁴⁴¹ Thus, as a practical and legal matter, HIPAA is inadequate protection.⁴⁴²

⁴³⁷ See ARMANDO LARA-MILLÁN, REDISTRIBUTING THE POOR: JAILS, HOSPITALS, AND THE CRISIS OF LAW AND FISCAL AUSTERITY 14 (2021); SEIM, *supra* note 81, at 16. Other research suggests police and mental health professionals can be at odds. Thomas M. Green, *Police as Frontline Mental Health Workers: The Decision to Arrest or Refer to Mental Health Agencies*, 20 INT'L J.L. & PSYCHIATRY 469, 483–84 (1997).

⁴³⁸ Song, *supra* note 375, at 2689–90.

⁴³⁹ See Sara F. Jacoby et al., *When Health Care and Law Enforcement Intersect in Trauma Care, What Rules Apply?*, HEALTH AFFS.: FOREFRONT (Oct. 1, 2018), <https://www.healthaffairs.org/doi/10.1377/forefront.20180926.69826> [<https://perma.cc/CK2A-6DYA>] (“The danger of the current policy landscape is that any interpretive ambiguities can result in ad hoc negotiations for when, where, and how law enforcement activities take place in health care institutions. This may lead to unintended, informal, and even illegal access to patients and disclosures of their health information to police. It can also promote interprofessional conflict and negative clinical outcomes.”); see also Lara-Millán, *supra* note 16, at 882.

⁴⁴⁰ See WORKING GRP. ON POLICING & PATIENT RTS., POLICE IN THE EMERGENCY DEPARTMENT: A MEDICAL PROVIDER TOOLKIT FOR PROTECTING PATIENT PRIVACY 8 (2021), <https://www.law.georgetown.edu/health-justice-alliance/wp-content/uploads/sites/16/2021/05/Police-in-the-ED-Medical-Provider-Toolkit.pdf> [<https://perma.cc/W5SB-Y8KV>].

⁴⁴¹ See Harada et al., *supra* note 32, at 745; cf. WORKING GRP. ON POLICING & PATIENT RTS., *supra* note 440, at 11–14 (providing guidance to medical providers on how to approach law enforcement officers to protect patient rights).

⁴⁴² For veterans accessing health care within the VA, the agency is currently considering specific exceptions for sharing medical information with law enforcement. The VA published a System of Records Notice (SORN) on February 6, 2023, that includes two parts that promote information sharing between the VA and law enforcement. Privacy Act of 1974, 88 Fed. Reg. 7776, 7777 (Feb. 6, 2023) (listing “Law Enforcement” and “Law Enforcement, for Locating Fugitive” as two uses of the system). This latest SORN is still in its comment period. *Id.* at 7776.

The primary privacy protection⁴⁴³ for educational records for students of any age is the Family Educational Rights and Privacy Act⁴⁴⁴ (FERPA), which “generally requires written parent or ‘eligible student’ consent before an educational agency (district) or institution (school) discloses a student’s education records and the personally identifiable information (PII) contained therein.”⁴⁴⁵ However, FERPA creates an exception for situations involving school safety⁴⁴⁶ and grants SROs access to students’ educational records when they qualify as “school officials” with “legitimate educational interests.”⁴⁴⁷ SROs easily satisfy this definition when they are employed by the school board or school district, rather than the local police. Recall that less than sixty percent of school police work for the local police department, with the remainder concentrated disproportionately in urban areas with high numbers of low-income students of color.⁴⁴⁸ In addition, when a police officer overhears conversations or observes actions, the corresponding information is not protected under FERPA. This means that a school police officer’s observations are not protected under FERPA.⁴⁴⁹ Thus, the officer’s proximity inherently expands the opportunity for investigations and other law enforcement objectives. Even “mundane social strategies” such as

⁴⁴³ In addition to FERPA, the Children’s Internet Protection Act, 20 U.S.C. § 9134, 47 U.S.C. § 254, implemented through the Federal Communications Commission (FCC), does not adequately protect student information from law enforcement when students use educational technology software. Section I.I.C discusses the collection and dissemination of information generated when students use school-issued devices or internet servers through programs such as GoGuardian and Gaggle. The FCC rules for school districts are not equipped to address the range of monitoring educational technology allows. Intended to protect children from obscene and pornographic internet content, gaps in the federal scheme allow ed tech companies to gather behavioral and activity information. See WARREN & MARKEY, *supra* note 320, at 4, 9–10. See generally HANKERSON ET AL., *supra* note 320, at 11; Amanda Holpuch & April Rubin, *Remote Scan of Student’s Room Before Test Violated His Privacy, Judge Rules*, N.Y. TIMES (Aug. 25, 2022), <https://www.nytimes.com/2022/08/25/us/remote-testing-student-home-scan-privacy.html> [<https://perma.cc/SZ5Q-ACZS>].

⁴⁴⁴ 20 U.S.C. § 1232g; 34 C.F.R. § 99.3 (2021) (defining “education records” as records that contain information “[d]irectly related to a student” and which are “[m]aintained by an educational agency or institution or by a party acting for the agency or institution”).

⁴⁴⁵ PRIV. TECH. ASSISTANCE CTR., U.S. DEP’T OF EDUC., SCHOOL RESOURCE OFFICERS, SCHOOL LAW ENFORCEMENT UNITS, AND THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) 1 (2019) (footnote omitted), https://studentprivacy.ed.gov/sites/default/files/resource_document/file/SRO_FAQs.pdf [<https://perma.cc/RTL6-LDDS>].

⁴⁴⁶ Some of the circumstances where information may be excluded from FERPA protection include health and safety emergencies, 20 U.S.C. § 1232g(b)(1)(I); *id.* § 1232g(h)(1); 34 C.F.R. § 99.36; court orders, *id.* § 99.31(a)(9)(i); and denial of parental right to inspect any personal observations by faculty or staff, 20 U.S.C. § 1232g(a)(4)(B)(i).

⁴⁴⁷ 20 U.S.C. § 1232g(b)(1)(A). The U.S. Department of Education has confirmed that off-duty police officers and SROs who qualify as school officials may use personal identifying information from education records for promoting school safety. PRIV. TECH. ASSISTANCE CTR., *supra* note 445, at 11–12; see also 34 C.F.R. § 99.31(a)(1)(i)(B)(1)–(3) (detailing circumstances through which contractors or outside parties can be considered school officials).

⁴⁴⁸ KURTZ ET AL., *supra* note 4, at 7, 9, 11.

⁴⁴⁹ See 20 U.S.C. § 1232g(a)(4).

rapport-building serve crime enforcement goals.⁴⁵⁰ Perhaps most importantly, law enforcement records, even if obtained outside criminal investigative duties (for example, counseling), are still considered law enforcement records, not protected educational records.⁴⁵¹ Sometimes students talking with school police believe they are speaking to a trusted adult, yet privacy laws simply don't protect these conversations.⁴⁵²

For the U.S. Department of Housing and Urban Development (HUD), the disclosure of personal private information is regulated through the Privacy Act of 1974. The Privacy Act allows lawful disclosure to law enforcement personnel when the head of the agency makes a request in writing.⁴⁵³ Practically, the "head of the agency" requirement is not strictly construed, and this "dut[y] may be delegated . . . to other officials, when absolutely necessary."⁴⁵⁴ Disclosure to state or local governments for civil or criminal purposes is also permitted.⁴⁵⁵ Law enforcement can obtain information with a warrant or under emergency

⁴⁵⁰ See Higgins et al., *supra* note 309, at 578 ("Although rapport-building seemingly resembled non-law enforcement roles (e.g., counselling, mentorship), we find that rapport could be framed by a crime control lens in which the relationships built were used to achieve law enforcement goals. Rapport-building could be read within a school criminalization framework because its usefulness is strategically underpinned by a desire to use law enforcement to control student behaviour. Similar to how police in the community may befriend informants, findings suggest SROs may strategically build rapport with students to acquire crime-related information. Rapport-building demonstrates how mundane social strategies can be governed by crime logic.")

⁴⁵¹ Najarian R. Peters, *The Golem in the Machine: FERPA, Dirty Data, and Digital Distortion in the Education Record*, 78 WASH. & LEE L. REV. 1991, 2010-11 (2022) ("Police officers who work in schools as SROs can create police reports that are not accessible or amendable by students or parents under FERPA. Those records created by police officers are not considered education records. . . . Therefore, requests to disclose or amend education records do not apply to the records that law enforcement actors acting within the educational environment create, collect, and otherwise process for their own records external to the school environment. While school officials are supposed to notify students or parents before disclosing records 'unless a court has ruled otherwise,' 'law enforcement or government officials may ask a school for confidentiality or serve process that requires the school to keep the request confidential.' Under this scenario, schools are supposed to 'remind law enforcement officials of FERPA's notification requirements, and determine whether the confidentiality request is supported by proper legal process.'" (footnotes omitted)); see 20 U.S.C. § 1232g(a)(4)(B)(ii); see also U.S. DEP'T OF EDUC., THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT: GUIDANCE FOR ELIGIBLE STUDENTS 6 (2020), https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPAforeligiblestudents.pdf [<https://perma.cc/5WSJ-MA97>].

⁴⁵² Peters, *supra* note 451, at 2010-11.

⁴⁵³ 5 U.S.C. § 552a(b)(7) (permitting disclosure without consent "to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought").

⁴⁵⁴ Privacy Act Guidelines, 40 Fed. Reg. 28949, 28955 (July 1, 1975).

⁴⁵⁵ *Id.* ("An agency may, upon receipt of a written request, disclose a record to another agency or unit of State or local government for a civil or criminal law enforcement activity.").

circumstances to protect the “health and safety” of a person.⁴⁵⁶ But the Privacy Act does not contemplate the advancement of surveillance technology or the private information collected through police security substations and their surveillance equipment. For example, in 2019, the local housing authority in Detroit implemented facial recognition software in security cameras through an agreement with the Detroit Police Department.⁴⁵⁷ Perhaps anticipating community fears, the Detroit Housing Commission’s Executive Director stated: “I think that police departments won’t make frivolous claims based solely on technology. . . . I think that they will use the technology as one tool that they use in bringing people into the criminal justice system.”⁴⁵⁸ This statement belies a trust in police, regardless of the specific tools used to police public housing residents.⁴⁵⁹

Utilizing a transinstitutional approach to examine privacy laws and law enforcement exceptions reveals a consistent gap in protection for the users of formal public institutions. Law enforcement exceptions permit sharing personal private information, even where the law requests that police take steps to show necessity or exigency prior to obtaining the records. Positioning police inside institutions enables officers to override the privacy protections. Specifically, when police directly observe or collect information about clientele or the institution, it belongs to them.

This Part explores ways in which policing exploits institutions to further surveil race-class subjugated communities. When formal institutions share information with the police, they have incomplete knowledge about how the information will be used or further shared. Police take advantage of gaps in legal knowledge, privacy protections, authority, and safety measures to entrench their surveillance tools and technologies. To the detriment of their clientele, bureaucratic workers view police as experts on criminal process, privacy law, and legal regulation over criminal investigations. Gaps in workers’ knowledge, coupled with gaps in privacy protections for institutional clientele when it comes to law enforcement purposes, enable police to broaden their surveillance. Imbalanced authority between workers and between police and workers create other opportunities for police to exercise their discretionary and coercive authority where, in my view, it should be narrowed or belong

⁴⁵⁶ See 5 U.S.C. § 552a(b)(8), (b)(11). The former exception was intended for sparing use. See *DePlanche v. Califano*, 549 F. Supp. 685, 704 (W.D. Mich. 1982) (“Both the Senate and House reports indicate that this subsection was intended to apply only to such valid life and death situations as an airplane crash or epidemic, ‘where consent cannot be obtained because of time and distance’” (quoting H.R. REP. NO. 93-1416, at 13 (1974))).

⁴⁵⁷ See Fadulu, *supra* note 415.

⁴⁵⁸ *Id.*

⁴⁵⁹ Other housing authorities have come under scrutiny for much more common surveillance methods, including surveillance cameras. See, e.g., Justin Wm. Moyer, *Lawsuit Alleges D.C. Housing’s Cameras Could “Capture Intimate Details,”* WASH. POST (Dec. 30, 2022, 7:00 AM), <https://www.washingtonpost.com/dc-md-va/2022/12/30/dc-housing-authority-surveillance> [https://perma.cc/SG2K-DVVD].

to other people within the institution. This Article's transinstitutional approach to police surveillance may be useful in studying other settings where police have or have not permeated the structures and culture. Some institutions are willing hosts, others antagonistic.⁴⁶⁰ Future projects can consider the impermeable institutions, or at least whether there are institutions where police would never embed, and why or why not.

This Article focuses on institutional design and the identifiable patterns that become apparent once the institution of policing has become inculcated. The primary goal is to bring forward the vulnerability of institutions to the logics of policing, as well as policing's role in undermining an institution's valuable and noncarceral goals. This Article's consideration of several locations allows for future scholarship to better consider trade-offs between the state's interest in criminal enforcement and costs to privacy, civil liberties, and social well-being.

IV. WHAT IS TRANSINSTITUTIONAL POLICING?

This Article has thus far asked and answered the question: Are there transinstitutional patterns, and, if so, what are they? Now it asks: Where did these transinstitutional design features originate? In section IV.A, I first look at the federal influence in spreading police throughout the organizational contexts discussed in this Article. Scholars have debated whether mass incarceration is a phenomenon of federal or local and state governments.⁴⁶¹ Regardless of the origin point of mass incarceration, the federal government bears significant responsibility for the transinstitutional nature of policing. In section IV.B, I then look at what shapes transinstitutional policing: the increased permeability of institutions serving race-class subjugated communities to police, the fear some workers in these institutions have of their clientele, common characteristics of bureaucratic employees and employers, metacollaborations between institutions, and the way police move between settings in their careers, holding allegiances to other police over civilian colleagues. Finally, in section IV.C, I discuss the lessons learned for bureaucratic administrators.

⁴⁶⁰ See *supra* Part I, pp. 818–24.

⁴⁶¹ Compare Katherine Beckett & Megan Ming Francis, *The Origins of Mass Incarceration: The Racial Politics of Crime and Punishment in the Post-Civil Rights Era*, 16 ANN. REV. L. SOC. SCI. 433, 438 (2020) (discussing the impact of federal legislation on incarceration rates in the fifty states), and HINTON, *supra* note 17, at 8, 11, with Mona Lynch, *Mass Incarceration, Legal Change, and Locale: Understanding and Remediating American Penal Overindulgence*, 10 CRIMINOLOGY & PUB. POL'Y 673, 676 (2011) (“Although sentencing statutes have been toughened at the state and federal levels, thereby creating the capacity for mass incarceration, mass incarceration has not been realized without local-level criminal justice actors transforming their daily practices to send more and more offenders away to state penal institutions.”), and Elizabeth Hinton & DeAnza Cook, *The Mass Criminalization of Black Americans: A Historical Overview*, 4 ANN. REV. CRIMINOLOGY 261, 274–78 (2021).

A. Federal Influence

Congress has played a central role in placing police in public institutions.⁴⁶² Professor Elizabeth Hinton's work brought to the fore how racialized sociopolitical tension, the so-called War on Drugs, and neoliberal attacks on social welfare all generated justifications for planting police in institutions.⁴⁶³ Beginning in the 1960s, modern law enforcement experienced a turning point.⁴⁶⁴ Police were called to quell conflicts related to broader social issues, such as the Civil Rights Movement and the Vietnam War. College students, people of color, and Vietnam veterans protesting the war clashed with police departments, which symbolized social control and norms enforcement.⁴⁶⁵ When President Richard Nixon declared the War on Drugs in 1971,⁴⁶⁶ city and state law enforcement gained new support from the federal government for crime suppression and prevention.⁴⁶⁷ Nixon-era policies spread horizontally to

⁴⁶² Professor Rachel Harmon argues that the federal government incentivizes and promotes policing at the local level through “money and power.” Rachel A. Harmon, *Federal Programs and the Real Costs of Policing*, 90 N.Y.U. L. REV. 870, 870 (2015). By identifying the “coercion costs of policing,” her important analysis provides a counterpoint to the view that with federal resources, local governments are getting policing without much cost. *Id.*

⁴⁶³ See HINTON, *supra* note 17, at 1–4.

⁴⁶⁴ See SAMUEL WALKER & CHARLES M. KATZ, *THE POLICE IN AMERICA: AN INTRODUCTION* 42–52 (6th ed. 2008); Hinton & Cook, *supra* note 461, at 263–65, 274–78; Paul G. Chevigny, *Politics and Law in the Control of Local Surveillance*, 69 CORNELL L. REV. 735, 736 (1984) (“The police bureaus and squads responsible for political surveillance grew more active in the 1960s. Part of the reason for the increased activity was reactive; the squads simply had more work to do during that decade of demands for reform and radical change.” (footnote omitted)).

⁴⁶⁵ See David Weisburd et al., *Raising Questions of Law and Order*, in *POLICE INNOVATION AND CONTROL OF THE POLICE: PROBLEMS OF LAW, ORDER, AND COMMUNITY* 3, 3 (David Weisburd et al. eds., 1993); Douglas Robinson, *Thousands on Fifth Ave. March in Vietnam Protest*, N.Y. TIMES, Mar. 27, 1966, at 1; Homer Bigart, *Protest Ties Up Brooklyn Campus*, N.Y. TIMES, Oct. 21, 1967, at 1; *Columbia Rally Turns Violent*, THE SUN, May 2, 1968, at A1; Peter A. Jay, *Collegians Take Protest to Annapolis: Black College Students Air Money-Cut Protest to Mandel*, WASH. POST, Feb. 18, 1970, at A1; Frank J. Prial, *Students Step Up Protests on War; Assault 4 Deaths*, N.Y. TIMES, May 6, 1970, at 1; *War Protesters Clash with Police in Capital: 86 Arrested on Lincoln Memorial Steps; Veterans End Siege of Statue of Liberty*, L.A. TIMES, Dec. 29, 1971, at A6; *Security Forces at VA Medical Centers: Hearing Before the Subcomm. on Hosps. & Health Care of the H. Comm. on Veterans' Affs.*, 97th Cong. 3–4 (1981) (prepared statement of Turner Camp, M.D., Associate Deputy Chief Medical Director, VA).

⁴⁶⁶ HINTON, *supra* note 17, at 203–04. President Nixon increased the size of federal drug control agencies, established mandatory sentencing, and authorized no-knock warrants at the federal and local level. *Id.* at 156–58, 318.

⁴⁶⁷ *Id.* at 158–59.

federal administrative agencies such as HUD⁴⁶⁸ and VHA,⁴⁶⁹ enabling new security features and police presence.⁴⁷⁰ As part of these initiatives, the federal government provided resources for police integration within institutions at the state and local level, including public housing,⁴⁷¹

⁴⁶⁸ *Security Forces at VA Medical Centers: Hearing Before the Subcomm. on Hosps. & Health Care of the H. Comm. on Veterans' Affs.*, *supra* note 465, at 3–4 (prepared statement of Turner Camp, M.D., Associate Deputy Chief Medical Director, VA). “In 1978, the U.S. Department of Housing and Urban Development (‘HUD’) instituted federal efforts to address crime conditions in public housing. It provided funding to thirty-nine local public housing authorities with the aim of developing community-based anti-crime programs.” Karteron, *supra* note 112, at 680 (citing W. VICTOR ROUSE & HERB RUBENSTEIN, U.S. DEP’T OF HOUS. & URB. DEV., 1 CRIME IN PUBLIC HOUSING: A REVIEW OF MAJOR ISSUES AND SELECTED CRIME REDUCTION STRATEGIES, at iv–v (1978), <https://www.ojp.gov/pdffiles1/Digitization/66418NCJRS.pdf> [<https://perma.cc/EF8T-2VT5>]); *see also* George L. Kelling, Steven M. Edwards & Mark H. Moore, *Federally Funded Community Crime Control: Urban Initiatives Anti-crime Program*, 1 CRIM. J. POL’Y REV. 58, 59–60 (1986); Deborah N. Archer, *Exile from Main Street*, 55 HARV. C.R.-C.L. L. REV. 788, 791 (2020). *See generally* Jeffrey Fagan, Garth Davies & Adam Carlis, *Race and Selective Enforcement in Public Housing*, 9 J. EMPIRICAL L. STUD. 697, 699 (2012).

⁴⁶⁹ *Security Forces at VA Medical Centers: Hearing Before the Subcomm. on Hosps. & Health Care of the H. Comm. on Veterans' Affs.*, *supra* note 465, at 3 (prepared statement of Turner Camp, M.D., Associate Deputy Chief Medical Director, VA) (providing background that led to “a complete examination of [VA] medical centers’ vulnerability to crime and misconduct,” including that many VA medical centers “were impacted by the Nation’s growing drug problems”).

⁴⁷⁰ Sarah Miller, Note, *Reconceptualizing Public Housing: Not as a Policed Site of Control, But as a System of Support*, 28 GEO. J. ON POVERTY L. & POL’Y 95, 101–02 (2020) (“The post-1960s public housing reforms included a number of exclusion and termination policies to target individuals with criminal histories.”). “In 1975, the Department of Housing and Urban Development issued regulations instructing [housing authorities to consider] criminal histories when assessing housing applicants.” *Id.* at 102 n.51. In 1988, Congress passed the Anti-Drug Abuse Act (ADAA), Pub. L. No. 100-690, 102 Stat. 4181 (codified as amended in scattered sections of the U.S. Code), “which authorized housing authorities to evict tenants who engaged in ‘criminal activity,’” Miller, *supra*, at 102; *see also* 42 U.S.C. § 1437d. The “stated intent of the ADAA was to protect public housing residents,” but it only “further marginalized low-income residents.” Miller, *supra*, at 102; *see also* Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 504, 104 Stat. 4079, 4185 (1990) (codified as amended at 42 U.S.C. § 1437d(i)(6)) (extending accountability to family members and cohabitants).

⁴⁷¹ *See, e.g.*, LAW ENF’T ASSISTANCE ADMIN., U.S. DEP’T OF JUST., GRANTS AND CONTRACTS FISCAL YEAR 1973, at 11, 40, <https://www.ojp.gov/pdffiles1/Digitization/14312NCJRS.pdf> [<https://perma.cc/GGS5-LMJN>] [hereinafter 1973 GRANTS AND CONTRACTS] (listing \$78,000 to the Boston Housing Authority’s “Central Security Office” for “Vertical Policing Services” and more than \$1 million to the City of Newark’s “High Impact Anti-crime Program” for a “24 hour” patrol program for the Newark Housing Authority); LAW ENF’T ASSISTANCE ADMIN., U.S. DEP’T OF JUST., GRANTS AND CONTRACTS FISCAL YEAR 1970, at 13, <https://www.ojp.gov/pdffiles1/Digitization/11732NCJRS.pdf> [<https://perma.cc/LJ3G-T5FF>] (listing grant funding of \$76,370 to the Connecticut “Governor’s Planning Committee on Criminal Administration” for a “20-man patrol force composed of special police officers” in connection with the Bridgeport Housing Authority).

schools,⁴⁷² and mass transit.⁴⁷³ Around the same time, college administrators elevated the status of school security and police agencies, and expanded their resources, in order to quash potential disorder from protests.⁴⁷⁴

Across the public sector, congressional policymaking and financial incentives to states during the 1970s through the 1990s encouraged the use of law enforcement to address perceived safety concerns within institutional settings. A slew of federal legislation addressing youth and schools,⁴⁷⁵ urban development and housing,⁴⁷⁶ and security on public

⁴⁷² Coleman, *supra* note 155, at 66–67. Policing at universities and colleges increased in response to student protests, while the traditional university police functions of “parking and traffic control, grounds and building patrol, criminal investigation,” and campus security also continued. SEYMOUR GELBER, U.S. DEP’T OF JUST., *THE ROLE OF CAMPUS SECURITY IN THE COLLEGE SETTING* 2 (1972), <https://www.ojp.gov/pdffiles1/Digitization/8966NCJRS.pdf> [<https://perma.cc/AWS7-K8GM>]; *cf.* Coleman, *supra* note 155, at 65 (“Very much like K–12 policing, college policing has seen an evolution from unarmed security guards to full-fledged police departments. As the threats on campus have become more complex, we have seen more resources put into the safety and security of these college campuses.”).

⁴⁷³ 1973 GRANTS AND CONTRACTS, *supra* note 471, at 70 (reporting a \$1 million grant to the Philadelphia Police Department for its Public Transit Crime Reduction Program); *see also* L. SIEGEL ET AL., *LAW ENF’T ASSISTANCE ADMIN.*, U.S. DEP’T OF JUST., *POLICING URBAN MASS TRANSIT SYSTEMS* 35–36 (1979), <https://www.ojp.gov/pdffiles1/Digitization/60284NCJRS.pdf> [<https://perma.cc/5QRG-9AXY>] (describing the Philadelphia Police Department’s transit unit expansion).

⁴⁷⁴ *See supra* note 472 and accompanying text.

⁴⁷⁵ For example, in 1994, President Clinton signed the Gun-Free Schools Act of 1994 (GFSA), 20 U.S.C. § 8921 (2000) (repealed 2022). That law mandates that each state receiving federal funds have a state law requiring local educational agencies to expel, for at least one year, any student who brings a weapon to school. *Id.* § 8921(b)(1); *accord* U.S. DEP’T OF EDUC., *EARLY WARNING, TIMELY RESPONSE: A GUIDE TO SAFE SCHOOLS* 11, <https://www.ojp.gov/pdffiles1/172854.pdf> [<https://perma.cc/GV62-G35B>]. The GFSA also encourages states to introduce zero-tolerance laws. Kathleen M. Cerrone, *The Gun-Free Schools Act of 1994: Zero Tolerance Takes Aim at Procedural Due Process*, 20 PACE L. REV. 131, 132 (1999). By 1995, most states had come into compliance, ushering in a new and harsh era of student discipline. *Id.* at 163. In the wake of these policies, students began to receive suspensions and expulsions for harmless and trivial behavior, such as bringing a pocketknife, Advil, acne medication, or a toy gun to school. *See* Donna St. George, *More Schools Are Rethinking Zero Tolerance*, WASH. POST (June 1, 2011, 8:45 PM), https://www.washingtonpost.com/local/education/more-schools-are-rethinking-zero-tolerance/2011/05/26/AGSIKMGH_story.html [<https://perma.cc/L2EC-USSM>]. Alongside the traditional use of punishment such as expulsion or suspensions, schools adopted surveillance (random searches, K-9 units), supervision (SROs), and punishment and deterrence (zero-tolerance policies) measures of the criminal justice system. *See* HINTON, *supra* note 17, at 92; Randall R. Beger, *Expansion of Police Power in Public Schools and the Vanishing Rights of Students*, 29 SOC. JUST., nos. 1–2, 2002, at 119, 120, 123. This criminalization of the daily routine of students turned certain public schools into surveillance environments modeled on high-crime policing. *See* Janel George, *Populating the Pipeline: School Policing and the Persistence of the School-to-Prison Pipeline*, 40 NOVA L. REV. 493, 500–02 (2016); Fedders, *supra* note 11, at 1481.

⁴⁷⁶ HINTON, *supra* note 17, at 279–81; U.S. DEP’T OF HOUS. & URB. DEV., *INTERAGENCY URBAN INITIATIVES ANTI-CRIME PROGRAM* 16–17 (1980) (describing federal efforts to provide funding for police in public housing). As an example, Drug Elimination Grants allowed local housing authorities to apply to HUD for designation as a Safe Neighborhood Action Plan city. Richard Elliott, *LHAs and Law Enforcement Partnerships*, 53 J. HOUS. & CMTY. DEV., Sept.–Oct. 1996, at

transportation,⁴⁷⁷ among others, provided direct federal funding or grant opportunities to bring more police into institutions.⁴⁷⁸ Some allowed upgrades in security equipment (for example, reinforced doors and electronic surveillance)⁴⁷⁹ or the hiring of police or other personnel for the purpose of surveillance or security.⁴⁸⁰ In addition, federal agencies passed regulations encouraging states to pass laws governing the safety of workers in multiple public sector industries, including health care.⁴⁸¹ Federal agencies and congressional commissions published lengthy reports and studies providing suggestions on how and why to incorporate surveillance, security, and police into higher education, transportation, hospitals, and public housing.⁴⁸² Federal efforts centralized the incorporation of police into various institutional contexts, even

37, 40. The prosecutor's office from Pulaski County (Little Rock) approached the North Little Rock Housing Authority and offered to contribute dollar-for-dollar funds to match a portion of the housing authority's Drug Elimination Grant program money. *Id.* at 38. This led to two full-time investigators in public housing areas, working with the police mini-substations located in the public housing areas to "streamlin[e] the process of prosecution." *Id.*

⁴⁷⁷ See 49 U.S.C. § 5307(c)(1)(J)(i) (requiring grant recipients to expend funding on public transportation security such as "increased camera surveillance").

⁴⁷⁸ NANCY E. GIST, BUREAU OF JUST. ASSISTANCE, U.S. DEP'T OF JUST., FACT SHEET: LOCAL LAW ENFORCEMENT BLOCK GRANTS PROGRAM 1 (1996) (describing program funding areas for new law enforcement hiring, technology, and school security).

⁴⁷⁹ For example, HUD used money "granted by the Public Housing Security Demonstration Act to secure lobbies with electronic surveillance, to improve doors and locks with metal bars, and to augment public housing patrol forces by paying the salaries of law enforcement officials." See HINTON, *supra* note 17, at 298. The joint initiative also allowed the housing authority investigators to "conduct criminal background checks on all applicants to the public housing and Section 8 programs[,] . . . work closely with law enforcement agencies to assist in raids, to serve warrants, and to build and maintain a gang intelligence database." Elliott, *supra* note 476, at 38. See generally DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 12-14 (1993).

⁴⁸⁰ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 10002, 108 Stat. 1796, 1807; see, e.g., NANCY E. GIST, BUREAU OF JUST. ASSISTANCE, U.S. DEP'T OF JUST., A HISTORY OF THE LOCAL LAW ENFORCEMENT BLOCK GRANTS PROGRAM: SUPPORTING LOCAL SOLUTIONS TO CRIME 1-2 (2000) (indicating \$1.2 billion distributed during FY 1996-1998, with grantees employing funds for equipment, technology, police hiring and payroll, and school security).

⁴⁸¹ See 29 U.S.C. § 651(b)(11) ("The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources . . . by encouraging the states to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this chapter, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith."); *id.* § 667 ("State jurisdiction and plans."); 29 C.F.R. § 1902.1.

⁴⁸² See, e.g., U.S. DEP'T OF EDUC., *supra* note 475, at 6-7 (describing measures that purport to help schools and teachers identify "children who are troubled," *id.* at 7, before they could cause harm); see also DEBORAH LAMM WEISEL, TACKLING DRUG PROBLEMS IN PUBLIC HOUSING: A GUIDE FOR POLICE 101-02 (1990) (recommending "'occupying' the community," accomplished by increasing police assigned to public housing developments, opening "mini-stations within the complexes," *id.* at 101, and "[b]eefing up enforcement efforts," *id.* at 102, as a common approach).

though state and local decisions and policies on the ground varied a great deal.

Without the heavy federal emphasis on one approach to public safety (and a narrow conception of public safety), it is possible that states or localities may have experimented more and invented alternative institutions to address security and safety.⁴⁸³ After all, in at least two contexts, actors and organizations within institutions opposed the imposition of police. The nurses' unions and the medical leadership within the VHA disagreed with arming those police.⁴⁸⁴ Some principals and teachers' unions also pushed back against increasing police presence in schools as a response to urban protest movements.⁴⁸⁵ Neighborhood policing movements and self-policing efforts in Black and Puerto Rican communities could have received more support and developed as stand-alone institutions.⁴⁸⁶ I do not intend to overemphasize the possibility that alternatives to policing would have been supported or succeeded, given what we know about the ways such efforts that challenged white domination were often deliberately undermined.⁴⁸⁷ However, in light of today's vibrant discussion about alternatives to policing, cross-context analysis offers insight into the rich tradition of resistance to policing, even in the public sites most anchored in poverty management.

B. *The Ties that Bind*

Based on Parts II and III, this section draws out certain characteristics that link the institutions together. These characteristics present themselves differently in each institution.

⁴⁸³ See HINTON, *supra* note 17, at 8 ("After all, in the absence of the policing, juridical, and penal programs federal policymakers imposed, it is entirely possible that state and local governments would have decided to invest in an entirely different set of priorities.")

⁴⁸⁴ *Safety & Security in the VA, Hearings Before the Subcomm. Oversight & Investigations of the Comm. on Veterans' Affs. H.R.*, 105th Cong. 37–38 (1997) (statement of Barbara Frango Zicafoose, Legislative Co-chair, Nurses' Organization of Veterans Affairs (NOVA)) ("NOVA recognizes that the most frequent recommendation for controlling violence at our medical centers is to arm our VA Police with guns. . . . Guns are for killing and have no place in institutions developed to promote health and wellness and the treatment of disease. NOVA supports an alternative strategy." *Id.* at 37.); *Security Forces at VA Medical Centers: Hearing Before the Subcomm. on Hosps. & Health Care of the H. Comm. on Veterans' Affs.*, *supra* note 465, at 3–5 (1981) (statement of Turner Camp, M.D., Associate Deputy Chief Medical Director, VA).

⁴⁸⁵ *E.g.*, Lawrence Fellows, *Jansen Opposes Police in Schools: Calls Proposal "Unthinkable" — Leibowitz Backs Idea*, N.Y. TIMES, Nov. 27, 1957, at A1 (noting that a union representative suggested allocating funds for policing to mental health services instead); *Policemen at Schools Evaluated: Extra Cost May Be \$5,000,000*, N.Y. HERALD TRIB., Nov. 28, 1957, at 18 (reporting on Superintendent William Jansen's opposition to police in schools); *Parents' Unit Opposes Police in Schools; Teacher Groups Ask for Better Staffs*, N.Y. TIMES, Jan. 30, 1958, at 13 (reporting on the United Parents Association expressing that it would be "a sad day when policemen must be stationed in American public schools as a permanent measure"); Herbert Denton, *County Opposes Police for Schools*, WASH. POST TIMES HERALD, Aug. 13, 1970, at B2 (superintendent noting that police would be "on call" but would not be "patrol[ing] the halls").

⁴⁸⁶ See HINTON, *supra* note 14, at 10–13, 20–21.

⁴⁸⁷ *See id.*

First, race and class drive some institutions to center policing as their safety response. Other institutions, such as colleges or universities, may be less permeable because they serve individuals with less social marginality, but they are not totally impermeable.⁴⁸⁸ As I have noted earlier, the institution of policing exploits the carceral instincts and tendencies of formal institutions.⁴⁸⁹ The problem is not solely police, but rather that policing expands the ways in which institutions of care embed carcerality via their personnel, laws, and policies.⁴⁹⁰ Formal institutions that embody tensions between care and carcerality seem to inherently bend toward the latter, encouraging police authority and mass criminalization, but the picture is complex.⁴⁹¹ Police are part of a larger carceral apparatus that has expanded at the expense of the welfare state. Police directly enforce noncriminal rules, policies, and norms across settings. Their role encompasses maintaining a type of public order across institutions.⁴⁹² Moreover, as part of a larger crime-control apparatus, police are “sources of legitimation for an anti-welfare politics and for a conception of the poor as an undeserving underclass.”⁴⁹³

Second, formal institutions are more vulnerable to policing when their workforce feels insecurity and fear toward its clientele.⁴⁹⁴ The

⁴⁸⁸ See *supra* notes 230–48 and accompanying text.

⁴⁸⁹ See *supra* notes 219–41 and accompanying text.

⁴⁹⁰ See, e.g., Harada et al., *supra* note 32, at 747 (describing ways police are embedded in emergency rooms). See generally BEN-MOSHE, *supra* note 65.

⁴⁹¹ See sources cited *supra* note 16.

⁴⁹² See *supra* note 22.

⁴⁹³ GARLAND, *supra* note 33, at xii; see also Katherine Beckett & Bruce Western, *Governing Social Marginality: Welfare, Incarceration, and the Transformation of State Policy*, 3 PUNISHMENT & SOC’Y 43, 44 (2001) (“[W]elfare and penal institutions comprise a single policy regime aimed at the governance of social marginality.”).

⁴⁹⁴ See BEN-MOSHE, *supra* note 65, at 21–28 (discussing the theory of “racial criminal pathologization,” *id.* at 23, in which racism, ableism, and sanism coincide to lead to pathologization of individuals perceived as criminal); Benjamin W. Fisher et al., *Protecting the Flock or Policing the Sheep? Differences in School Resource Officers’ Perceptions of Threats by School Racial Composition*, 69 SOC. PROBS. 316, 331 (2022) (discussing research showing higher levels of threat perceptions in schools with more “disadvantaged” children lead to SROs using law enforcement roles more frequently than in schools with less student disadvantage, where SROs are more likely to engage in their “education” role). For examples from the health care context, see Osagie K. Obasogie, *The Return of Biological Race? Regulating Innovations in Race and Genetics Through Administrative Agency Race Impact Assessments*, 22 S. CAL. INTERDISC. L.J. 1, 5–6 (2012). For examples from transit contexts, see VAN EYKEN, *supra* note 423, at 14–15 (2021) (“For transit operators and other frontline workers, transit safety is a matter of workplace safety. Fear of abuse and harassment from riders creates stress for transit workers and makes carrying out their duties more difficult. Transit operators advocate for police presence as it helps to reassure transit workers and makes them feel protected . . .”). For examples from school contexts, see Clara Harter, *New Report Reignites Debate over Police on LAUSD Campuses*, L.A. DAILY NEWS (Feb. 3, 2023, 4:48 PM), <https://www.dailynews.com/2023/02/02/new-report-reignites-debate-over-police-on-lausd-campuses> [<https://perma.cc/43R5-FBNU>] (reporting on a 2020 Los Angeles Unified School District (LAUSD) survey finding that a “majority of LAUSD parents, teachers and students believe school police make campuses safe”); Fisher et al., *supra*, at 319 (discussing educator studies finding teachers

sense of insecurity may be based on training,⁴⁹⁵ experience, cognitive bias,⁴⁹⁶ or the reality of harm or crime against the institutions' staff.⁴⁹⁷ Location also likely plays a role. Universities and hospitals in large cities or areas associated with high crime, disadvantage, or Blackness may be more likely to utilize uniformed police because the locations are more open for public use than private institutions in more rural areas.⁴⁹⁸ Also, clientele who ask for police in circumstances where they perceive themselves as vulnerable to personal harm play a role in the establishment of policing logics.⁴⁹⁹ In future work, I will take up the role of public sector unions in advocating for police responses to this feeling of insecurity.

more likely to expect Black children to misbehave or recommend more severe discipline for Black students than white students). See generally William J. Hall et al., *Implicit Racial/Ethnic Bias Among Health Care Professionals and Its Influence on Health Care Outcomes: A Systematic Review*, 105 AM. J. PUB. HEALTH, at e60 (2015).

⁴⁹⁵ Bernard Beech & Phil Leather, *Workplace Violence in the Health Care Sector: A Review of Staff Training and Integration of Training Evaluation Models*, 11 AGGRESSION & VIOLENT BEHAV., 2006, at 27, 32–33 (discussing the importance of training in managing workplace violence in the health care setting).

⁴⁹⁶ Carmen Black & Amanda Calhoun, *How Biased and Carceral Responses to Persons with Mental Illness in Acute Medical Care Settings Constitute Iatrogenic Harms*, 24 AMA J. ETHICS 781, 783–84 (2022) (“Personal biases converge at the systems level to create an entire series of discriminatory policies and protocols that fail to ensure equitable, evidence-based care to persons with [several mental illness] on inpatient medical units. . . . Security-only interventions in behavioral emergencies invite those same prejudices into inpatient care, and harms of biased hospital policing are compounded by racism and bias against mental health.”); Asia Fields, *Seattle Children’s Knew for Years Security Was Called Disproportionately on Black Patients*, SEATTLE TIMES (Apr. 21, 2021, 9:31 AM), <https://www.seattletimes.com/seattle-news/times-watchdog/seattle-childrens-knew-for-years-security-called-more-often-on-black-patients> [<https://perma.cc/EL3V-LWXA>].

⁴⁹⁷ *Violence in the Workplace: Risk Factors and Prevention Strategies*, CTRS. FOR DISEASE CONTROL & PREVENTION: NAT’L INST. FOR OCCUPATIONAL SAFETY & HEALTH (NIOSH) (July 1996), <https://www.cdc.gov/niosh/docs/96-100/risk.html> [<https://perma.cc/53HY-VT4F>] (noting “factors may increase a worker’s risk for workplace assault,” including “[w]orking with unstable or volatile persons in health care, social service, or criminal justice settings”).

⁴⁹⁸ Black & Calhoun, *supra* note 496, at 784 (“Health care professionals’ own prejudice can lead them to disproportionately activate security emergency protocols on patients of color and patients living with [severe mental illness], as happened at Seattle Children’s Hospital, where security has been called on Black patients at twice the rate of White patients for over 10 years without anything being done about it.”). Out of the 100 largest universities by campus enrollment, those located in or near the cities of Philadelphia, New York, and Los Angeles had among the most full-time law enforcement employees per 10,000 students. BRIAN A. REAVES, BUREAU OF JUST. STAT., U.S. DEP’T OF JUST., CAMPUS LAW ENFORCEMENT, 2011–12, at 23–24 (2015), <https://bjs.ojp.gov/content/pub/pdf/cle1112.pdf> [<https://perma.cc/LM4A-E342>]; see *id.* at 2 (reporting that on 501 public university campuses, 92% used sworn officers, as compared to 404 private university campuses, where 38% used sworn officers); Rhodes, *supra* note 380, at 502 (documenting negative effects associated with greater law enforcement role, as opposed to counseling or teaching, among SROs); Jason Wingard, Commentary, *Homicides Near Universities Are a Crisis that Needs Immediate Action and Long-Term Solutions*, CHI. TRIB. (Apr. 18, 2022, 5:00 AM), <https://www.chicagotribune.com/opinion/commentary/ct-opinion-homicides-universities-off-campus-philadelphia-chicago-20220418-j6j27mxk6ncvdkusabrkn77qya-story.html> [<https://perma.cc/2B6R-J9K2>]; see also *About Public Safety: Frequently Asked Questions*, TEMPLE UNIV., <https://www.temple.edu/life-temple/safety/safety-faq> [<https://perma.cc/5K6N-HK9J>].

⁴⁹⁹ See, e.g., Harter, *supra* note 494.

Third, government bureaucrats and public sector workers share common characteristics that help entrench police within the institutions analyzed in this Article.⁵⁰⁰ For example, these workers have defined roles and follow hierarchies, yet carry some discretionary authority over whom to serve or when to serve them.⁵⁰¹ In some circumstances, the discretion can lead to more calls to the police. Additionally, administrative leaders share legal obligations to protect workers, which can ramp up the impulse to adopt policing over other potential strategies.⁵⁰²

Fourth, for each organizational setting, police rely upon a meta-framework of collaboration: collaboration between law enforcement agencies writ large⁵⁰³ and collaboration between police and administrators and staff within institutions (for example, hospitals,⁵⁰⁴ local housing authorities,⁵⁰⁵ or schools⁵⁰⁶). Even with the promise of greater societal protection against terrorism and crime, scholars and advocates understand that vast networks of formal agreements, technologies, and national-security apparatus extend social control.⁵⁰⁷ Veteran health,

⁵⁰⁰ LIPSKY, *supra* note 66, at 3–4.

⁵⁰¹ See Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOC. REV. 147, 153 (1983).

⁵⁰² E.g., Patel, *supra* note 59, at 835–42.

⁵⁰³ See RUHA BENJAMIN, RACE AFTER TECHNOLOGY: ABOLITIONIST TOOLS FOR THE NEW JIM CODE 167–68 (2019) (“Coding people as ‘risky’ kicks in an entire digital apparatus that extends incarceration well beyond the prison wall. . . . [S]chools and public housing as they currently function are an *extension* of the [prison-industrial complex]: many operate with a logic of carcerality and on policies that discriminate against those who have been convicted of crimes.”).

⁵⁰⁴ See, e.g., Song, *supra* note 375, at 2695–96 (“The lack of special privacy protections in the ER enables informal or formal collaborations between law enforcement and hospitals that heighten the police surveillance of patients.” *Id.* at 2695.)

⁵⁰⁵ See, e.g., Archer, *supra* note 468, at 790–96 (discussing the impacts of policing-based housing policies); Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 MICH. L. REV. 173, 191–93 (2019) (discussing reliance on criminal databases in tenant screening processes); Mick Dumke, *Like Chicago Police, Cook County and Illinois Officials Track Thousands of People in Gang Databases*, PROPUBLICA (July 19, 2018, 4:00 AM), <https://www.propublica.org/article/politic-il-insider-additional-gang-databases-illinois-cook-county> [<https://perma.cc/UTN8-XVKW>] (reporting on the Illinois State Police Department’s “gang database” and confirming that the list of agencies that can access and use the information includes the Chicago Housing Authority’s investigative offices).

⁵⁰⁶ See, e.g., Kevin Lapp, *Databasing Delinquency*, 67 HASTINGS L.J. 195, 212–15 (2015) (discussing the roles of schools as informants for police databases).

⁵⁰⁷ E.g., Ruha Benjamin, *Introduction: Discriminatory Design, Liberating Imagination, in CAPTIVATING TECHNOLOGY: RACE, CARCERAL TECHNOLOGICAL SCIENCE, AND LIBERATORY IMAGINATION IN EVERYDAY LIFE* 1, 2 (Ruha Benjamin ed., 2019) (“From credit-scoring algorithms to workplace monitoring systems, novel techniques and devices are shown to routinely build upon and deepen inequality. Racist and classist forms of social control, in this sense, are not limited to obvious forms of incarceration and punishment. . . .” (footnote omitted)); Chaz Arnett, *Race, Surveillance, Resistance*, 81 OHIO ST. L.J. 1103, 1110–11 (2020); Jessica M. Eaglin, *When Critical Race Theory Enters the Law & Technology Frame*, 26 MICH. J. RACE & L. 151, 160 n.45 (2021) (citing the work of Simone Brown); STOP LAPD SPYING COALITION, AUTOMATING BANISHMENT: THE SURVEILLANCE AND POLICING OF LOOTED LAND 1–2 (2021), <https://automatingbanishment.org/assets/AUTOMATING-BANISHMENT.pdf> [

mass transit, and school policing increased with the advent of the post-9/11 national-security apparatus, where numerous institutions were seen as “force multipliers” in the domestic “war against terrorism.”⁵⁰⁸ Some commenters call increased police presence in social and public institutions “security theater.”⁵⁰⁹ As section III.C discusses, institutions worry about the creep of surveillance and set up certain legal and policy measures to address the concern. Yet they should be concerned about police spreading personal information due to their omnipresence. The surveillance infrastructure creates an undercover panopticon.⁵¹⁰

Finally, the same police officers operate on the streets, as private security, and in other institutional settings; they hold allegiances to other police over civilian colleagues. Often, prior police experience and training are requirements for institutions hiring their own police officers.⁵¹¹ One might ask, then, is it surprising to see similar violence or control features inside institutions as on the streets? With the people moving across systems, so too are their relationships and allegiances. Conceptually, the culture of policing means the blue wall of silence and thin blue line travel from place to place.

Bureaucratic administrators and government officials hold a core belief that police will or ought to adapt to the culture of care.⁵¹² Some systems encourage or require specialized training and emphasize mental health crises,⁵¹³ adolescent brain development,⁵¹⁴ or cultural

UMHY] (“Modern policing incorporates tactics honed during ongoing settler colonialism, genocide, and enslavement. . . . ‘Predictive’ and ‘data-driven’ policing are the latest form of those harms. The purposes remain the same: speculatively criminalizing our identities, banishing us from our homes, and gathering ‘intelligence’ to control us.”).

⁵⁰⁸ See OFF. OF THE INSPECTOR GEN., U.S. DEP’T OF JUST., NO. I-2005-007, THE DEPARTMENT OF JUSTICE’S TERRORISM TASK FORCE, at ii, 18–19, 319 (2005).

⁵⁰⁹ BRUCE SCHNEIER, BEYOND FEAR 38 (2003) (“[O]ne of the goals of a security countermeasure is to provide people with a feeling of security in addition to the reality. But some countermeasures provide the feeling of security *instead of* the reality. These are nothing more than *security theater*. They’re palliative at best.”); Fedders, *supra* note 11, at 1462–64 (discussing “security theater” as “one of the key social forces driving school policing,” *id.* at 1462).

⁵¹⁰ See generally 4 JEREMY BENTHAM, PANOPTICON; OR, THE INSPECTION-HOUSE (1787), reprinted in THE WORKS OF JEREMY BENTHAM 37 (John Bowring ed., Russell & Russell, Inc. 1962) (1843).

⁵¹¹ See, e.g., *Job Postings*, NAT’L ASS’N OF SCH. RES. OFFICERS, <https://www.nasro.org/news/job-postings> [<https://perma.cc/9BNX-6HJ5>]; *Job Posting for School Resource Officer at City of Douglas*, SALARY.COM (Apr. 17, 2022), <https://www.salary.com/job/city-of-douglas/school-resource-officer/j202202170519549195934> [<https://perma.cc/5RCW-Z28C>] (“Applicants must have a minimum of three (3) years law enforcement experience . . .”).

⁵¹² See *supra* section I.B, pp. 823–24.

⁵¹³ See, e.g., Benjamin Mueller, *Shooting of Emotionally Disturbed Man Puts Focus on New Training*, N.Y. TIMES (Aug. 1, 2017), <https://www.nytimes.com/2017/08/01/nyregion/shooting-of-emotionally-disturbed-man-puts-focus-on-new-training.html> [<https://perma.cc/5CLV-36HY>].

⁵¹⁴ See, e.g., *Policing the Teen Brain Trainings*, STRATEGIES FOR YOUTH, <https://strategiesforyouth.org/services/ptb-training> [<https://perma.cc/2H3C-3H4B>].

competency⁵¹⁵ to reduce instances of police harm.⁵¹⁶ But by using professionals trained in empathy and anticarceral care, rather than deploying police with power to commit state-authorized violence, one might find even less harm to workers and their clientele.

C. Bureaucratic Lessons

This Article shows how bureaucratic organizations use police to control and manage race-class subjugated individuals in far more ways than are often recognized. I briefly summarize lessons learned for the bureaucratic administrator to pivot toward less policing to devolve an institution's carcerality.

Examining police across multiple spaces, I debunk a prevailing myth that bureaucratic administrators with sole or shared authority over specialized police can temper the excesses of policing: violence, racial disparities, and dignitary harms.⁵¹⁷ Administrators integrate police into bureaucratic missions and provide training on the vulnerabilities of clientele with the stated goal of aligning police with care.⁵¹⁸ Some institutional police serve as adjunct agencies to local police departments. They add police personnel and power to the localities' force.⁵¹⁹ This is conceptually similar to the "force multiplier" concept on the local level.⁵²⁰

The slippage between local police and embedded police functions belies a tension where administrators tell clientele and the public the embedded police will be safer and less harmful than local police.

Unfortunately, looking across institutions, we see much of the same type of harm and violence found among local street policing. The overlapping patterns this Article conceptualizes show that when institutions that should be providing necessary support connect their clients with systems of mass criminalization, they alienate the very people they intend to serve. Black, Latinx, American Indian, gender-nonconforming,

⁵¹⁵ See, e.g., Marcus Paxton & Robert Strauss, *Cultural Diversity and Cultural Competency for Law Enforcement*, POLICE CHIEF, <https://www.policechiefmagazine.org/cultural-diversity-and-competency> [<https://perma.cc/BN29-NSUT>].

⁵¹⁶ Even some transit police are given training related to transit. See, e.g., Stephen Downing, *LBPD Chief Luna Added to Racial Profiling Lawsuit*, BEACHCOMBER (July 26, 2020), <https://beachcomber.news/content/lbpd-chief-luna-added-racial-profiling-lawsuit> [<https://perma.cc/5V58-PRZ4>] (citing four-hour training course on transit policing).

⁵¹⁷ See *supra* section III.B, pp. 868–74.

⁵¹⁸ For example, in 2019, the Department of Veterans Affairs' Acting Under Secretary for Health for Operations and Management testified in front of Congress that the VA would focus on security education that incorporates "issues specific to health care" due to officers' "active and vital role in the clinical arena." *Examining VA's Police Force: Hearing Before the H. Subcomm. on Oversight & Investigations of the Comm. on Veterans' Affs.*, *supra* note 298, at 33 (statement of Renee Oshinski, Acting Deputy Under Secretary for Health for Operations and Management, Veterans Health Administration, VA). She acknowledged the importance of continual retraining on various tactics to prevent the use of lethal force and address the particular vulnerabilities of former service members. *Id.*

⁵¹⁹ See *supra* section II.B, pp. 839–50; sources cited *supra* notes 181–99.

⁵²⁰ See *supra* note 508 and accompanying text.

and disabled persons, as well as women and other marginalized persons, report distrust and disillusionment with institutions when police mediate their access to care and services.⁵²¹

Allowing police to inculcate the culture and design of the institutions I focus on in this Article naturalizes and expresses these carceral phenomena rather than embracing the nonpunitive or noncarceral objectives of the same systems. At the same time, a transinstitutional understanding of policing can help formal institutions develop nonpunitive approaches to safety that are less coercive and inclusive of a more holistic understanding of harm. Such an understanding would help these institutions better meet the needs of race-class subjugated communities by changing their institutional design and professional cultures, without engaging police for everything.

Circling back to the continuum of embedded police from section I.A, the degree of embeddedness — whether a subunit of local police or a full-fledged independent police agency — tells us something about how to reduce the role or footprint of police. It helps us understand the levers of influence — institutional administrators, police chiefs, or government actors. We can also observe the relationship between workers and embedded police — are they colleagues or do they carry informal social influence? Do the embedded police share office space or act more or less independently from municipal police? To what extent do embedded police engage with social service providers within the institutions or in the community? In the local efforts across the country to reduce police presence in the lives of race-class subjugated individuals, the answers to these types of questions, along with the mapping provided in this Article, can support strategic campaigns and mobilization for police reform.

Finally, without the broader view this Article offers, we tend to focus on the benefits of internal systems meant to reduce criminal penalty (for example, red flagging pays attention to individuals thought of as harmful; boundary enforcement connects the unhoused with services) without accounting for their breadth or drawbacks of the systems.⁵²² Understanding the breadth and scale of the connection between policing

⁵²¹ E.g., Michelle Fine et al., “Anything Can Happen with Police Around”: Urban Youth Evaluate Strategies of Surveillance in Public Places, 59 J. SOC. ISSUES 141, 154 (2003) (documenting low trust among “urban” youth in adults in positions of public authority, including police or security guards in schools); Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 JUST. Q. 462, 463, 473, 477–78 (2006) (discussing longitudinal data showing that first-time arrest and court appearance in high school increased the odds of dropping out by anywhere from two to four times).

⁵²² For an examination of policing’s safety rationale, see, for example, Barry Friedman, *What Is Public Safety?*, 102 B.U. L. REV. 725, 750 (2022) (“So ingrained is the mindset that public safety = protection, that we turn over many real problems of public safety . . . to police, who simply do not have the skills to do the job.”); Barry Friedman & Elizabeth G. Jánosky, *Policing’s Information Problem*, 99 TEX. L. REV. 1, 5 (2020) (considering “why we are so in the dark about policing and the practice of keeping ourselves safe, and what we can do to address the problem”).

forces suggests the project of disentanglement is much harder than one would anticipate.

I want to end with macro concerns, even though they fall outside the parameters of this Article. In the long term, we need a different political economy to reduce societal reliance on the police. The ultimate goal should be to create a political environment where the government provides more and better welfare benefits without the sharp edges of carceral and policing logics, and where institutions, their workers, and their clientele work cooperatively to create such a shift. Eliminating police within formal institutions would diminish the ubiquity of police and would require shifts in societal values and culture. And mechanisms to address public safety and harm would emanate from the community, not solely from public institutions. We need community-based approaches along with the political will to rebalance resource allocation toward true care provision within the welfare state.

CONCLUSION

This Article shows how bureaucratic organizations use police to control and manage race-class subjugated individuals in far more ways than is typically recognized. Studying the dynamics of police within formal institutions one by one, and even in groups of systems, risks missing the true impact of policing on race-class subjugated communities and suggests each domain is exceptional. It leads to solutions in one context but misses how police or police-like personnel might increase problems in other settings. This Article shows the benefits of a transinstitutional perspective to identify and analyze cross-institutional patterns and features of policing within institutions of care, learning, and social welfare. This Article helps to better illuminate the full scope of embedded policing practices using a six-feature framework: red flagging, street policing, wellness checks, networked information, bureaucratic conflict and cooperation, and vulnerable privacy. I will take up other concerns in future projects: practically, what are institutions and advocates doing to disentangle policing from formal institutions; what has been the role of public sector unions in growing embedded policing; and how does the Fourth Amendment grant police similar authority regardless of where they are situated — in public, the home, or formal institutions.