THE FORCE AND THE RESISTANCE:
WHY CHANGING THE POLICE FORCE IS NEITHER INEVITABLE, NOR IMPOSSIBLE

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INTRODUCTION

Responding to a white policeman's shooting of a black teenager, Reverend Jesse Jackson said that the United States was in a "national crisis."[1] That was in 1990. Jackson's concern was as pertinent over twenty years before that[2] as it is today, nearly thirty years later.[3] Calls for change in

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[1] Andrew H. Malcolm, *Change in Enforcement Is Said to Cut Violence Between Police and Public*, N.Y. TIMES, (Sept. 2, 1990), https://perma.cc/R2Z8-4Y9X.

[2] *See, e.g.*, NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT 8 (1968), https://perma.cc/WE9V-56R8 ("The abrasive relationship between the police and the minority communities has been a major—and explosive—source of grievance, tension, and disorder. The blame must be shared by the total society."); *see also* SAMUEL WALKER, THE NEW WORLD OF POLICE ACCOUNTABILITY 11 (2005) (discussing the apparent stagnancy since the "strife-torn decade of the 1960s," as well as the steps that police departments have taken internally to curb misconduct since then).

[3] *See, e.g.*, Eric Bradner, *Lawmakers Say Tensions Between Police, African-American Communities Aren't Going Away Soon*, CNN (May 3, 2015), https://perma.cc/XAW7-DXLX ("All told, the situation has become a national crisis, House Speaker John Boehner said Sunday."); Colin Campbell, *Al Sharpton: "We Are Dealing With A National Crisis" of Police Violence*, BUS. INSIDER (Dec. 3, 2014), https://perma.cc/F4SE-AUED; Edward-Isaac Dovere, *White House Awakes to "National Crisis,"* POLITICO (Apr. 28, 2015), https://perma.cc/8V7T-8S4Q.

policing tactics in the United States have echoed through the decades, inspiring numerous studies, books, and proposals for "organizational change."[4] Countless attempts to implement seemingly promising reforms have been tried and abandoned.[5] The U.S. Department of Justice has incorporated "best practices" from police departments around the country into settlements designed to curb civil rights violations and improve policing practices.[6] Yet in the 2010s, as stories of the deaths of unarmed black citizens at the hands of police have commanded national headlines and brought protesters to the streets in Baltimore, Ferguson, New York, and elsewhere,[7] the Reverend's words continue to resonate. This should come as no surprise, given studies showing that police culture and value orientations changed little during this period.[8] As Samuel Walker laments in his chronicle of "the new police accountability":

> The history of police reform is filled with stories of highly publicized changes that promised much but evaporated over the long run with only minimal impact . . . . Many cynics believe that the American police are incapable of reforming themselves and that the police subculture is resistant to all efforts to achieve accountability. Regrettably, a review of police history lends an uncomfortable amount of support to this very pessimistic view.[9]

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[4]   *See* Malcolm D. Holmes & Brad W. Smith, Race and Police Brutality: Roots of an Urban Dilemma 23-24, 138-41 (2008).

[5]   *See, e.g.*, Walker, *supra* note 2 at 178-79.

[6]   *See, e.g.*, *id.* at 5, 18.

[7]   *See, e.g.*, Daniel Funke & Tina Susman, *From Ferguson to Baton Rouge: Deaths of Black Men and Women at the Hands of Police* (July 12, 2016), L.A. Times, http://www.latimes.com/nation/la-na-police-deaths-20160707-snap-htmlstory.html [https://perma.cc/24S8-6LBN]; Chicago Dashcam Video Shows Police Killing of Laquan McDonald – Video, The Guardian (Nov. 24, 2015, 7:52 EST), https://www.theguardian.com/us-news/video/2015/nov/24/chicago-officials-release-video-showing-police-killing-of-laquan-mcdonald-video [https://perma.cc/5JV2-85VY]; Kim Severson, *Asking for Help, Then Killed by an Officer's Barrage*, N.Y. Times (Sept. 16, 2013), http://www.nytimes.com/2013/09/17/us/asking-for-help-then-killed-by-an-officers-barrage.html?action=click&contentCollection=U.S.&module=Related Coverage&region=EndOfArticle&pgtype=article [https://perma.cc/28NZ-PUZY]; Niraj Chokshi, *Keith Lamont Scott Was Killed by Two Gunshot Wounds, Family Autopsy Finds*, N.Y. Times (Oct. 12, 2016), https://www.nytimes.com/2016/10/13/us/keith-lamont-scott-was-killed-by-two-gunshot-wounds-family-autopsy-finds.html [https://perma.cc/Q9L9-QKE3]; *see also* Julia Craven, *More Than 250 Black People Were Killed By Police In 2016 [Updated]*, http://www.huffingtonpost.com/entry/black-people-killed-by-police-america_us_577da633e4b0c590f7e7fb17 [https://perma.cc/J632-UVB6] Huff. Po. (July 7, 2016, 9:45 AM, updated Jan. 1, 2017), *Police Killed More Than 100 Unarmed Black People in 2015*, Mapping Police Violence, https://mappingpoliceviolence.org/unarmed/ [https://perma.cc/8P4E-RX7B], *2014 Unarmed Victims*, Mapping Police Violence, https://mappingpoliceviolence.org/unarmed2014/ [https://perma.cc/7B5S-Q8MJ]. *Cf. also* Fatal Force (2017), https://www.washingtonpost.com/graphics/national/police-shootings-2017/ [https://perma.cc/F7GV-D9K2], Fatal Force (2016), Wash. Post, https://www.washingtonpost.com/graphics/national/police-shootings-2016/, 991 People Shot Dead by police in 2015, Wash. Post, https://www.washingtonpost.com/graphics/national/police-shootings/ [https://perma.cc/JVT2-P84W].

[8]   *See, e.g.*, Jihong Zhao et al., *Individual Value Preferences Among American Police Officers: The Rokeach Theory of Human Values Revisited*, 21 Policing: Int'l J. Police Strategy. & Mgmt. 22, 32 (1998) (finding little evidence of substantive change in the prevailing value orientations among police officers since their study over twenty years prior). *But cf.* Timothy Williams, *Long Taught to Use Force, Police Warily Learn to De-escalate*, N.Y. Times (June 27, 2015), http://www.nytimes.com/2015/06/28/us/long-taught-to-use-force-police-warily-learn-to-de-escalate.html [https://perma.cc/L35D-8BBB] (noting that police departments nationwide "are rethinking notions of policing that have held sway for 40 years, making major changes to how officers are trained in even the most quotidian parts of their work").

[9]   *See* Walker, *supra* note 2, at 17.

In other words: change is hard. Even with desire, urgency, and clear instructions on how to change, many fail.[10] Yet not all change efforts are doomed. To the extent that efforts to change policy or practice can shift organizational culture to one more accepting of such changes, resistance can be minimized.[11] But how to change organizational culture?

Studies show that people can evolve and, when they do, their evolution happens in a patterned and replicable way.[12] Organizations, which are created, directed, and made up of people,[13] are no different. Indeed, organizational psychology and change-management theory—embraced in the business sector—shed light on what would be necessary to create the conditions for more lasting change in policing.[14] This article makes the case for employing such an approach. After first describing the gap between policing culture today and the "guardian" culture described as ideal by the President's Task Force on 21st Century Policing, it will summarize failed efforts to change police forces in that direction and then apply a useful frame from organizational psychology to demonstrate how to overcome resistance to change and move towards a future without law enforcement use of unnecessary force.[15]

I.   FROM WARRIORS TO GUARDIANS

A.   Policing Culture Today

In a nation with over 18,000 individual law enforcement agencies, where policing is primarily locally controlled,[16] there is no unilateral police culture.[17] However, multiple studies

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[10]   ROBERT KEGAN & LISA LASKOW LAHEY, IMMUNITY TO CHANGE: HOW TO OVERCOME IT AND UNLOCK THE POTENTIAL IN YOURSELF AND YOUR ORGANIZATION 1 (2009) (describing a study finding that only one in seven heart patients who are warned that they will likely die if they fail to make changes to their diet, exercise, and other habits are able to make the change crucial to their survival).

[11]   See, e.g., Ali Danişman, Good Intentions and Failed Implementations: Understanding Culture-Based Resistance to Organizational Change, 19 EUR. J. WORK & ORG. PSYCH. 200, 201 (2010) (noting that organizational culture is the "root" of resistance to change (citing E. SCHEIN, ORGANIZATIONAL CULTURE AND LEADERSHIP (1992))).

[12]   See KEGAN & LAHEY, supra note 10, at x.

[13]   See MICHAEL A. DIAMOND & SETH ALLCORN, PRIVATE SELVES IN PUBLIC ORGANIZATIONS: THE PSYCHODYNAMICS OF ORGANIZATIONAL DIAGNOSIS AND CHANGE ix (2009) ("[Organizations] are objectively, subjectively, and intersubjectively conceived relational systems existing inside and outside the human mind.").

[14]   See Jihong Zhao et al., Value Change Among Police Officers at a Time of Organizational Reform: A Follow-Up Study Using Rokeach Values, 22 POLICING: INT'L J. POLICE STRATEGY & MGMT. 152, 153 (1999) ("The most widely read and discussed scholarship on [community-oriented policing] suggests that the successful institutionalization of the community policing philosophy depends primarily on the achievement of a permanent change in the organizational culture and value orientations of individual police employees and their supervisors[,]" (citing M. A. Wycoff & W. Skogan, Community Policing in Madison: An Analysis of Implementation of Impact, in THE CHALLENGE OF COMMUNITY POLICING: TESTING THE PROMISES 75 (Dennis P. Rosenbaum ed., 1994); G. Kelling & M. Moore, From Political to Reform to Community: The Evolving Strategy of Police, in COMMUNITY POLICING: RHETORIC OR REALITY? 3-25 (J. Greene, J. & S. Mastrofski eds., 1988))).

[15]   See generally POLICE EXEC. RESEARCH FORUM, GUIDING PRINCIPLES ON USE OF FORCE (March 2016), http://www.policeforum.org/assets/guidingprinciples1.pdf [https://perma.cc/4CWH-EUX4].

[16]   PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING ("TASK FORCE"), OFFICE OF CMTY. ORIENTED POLICING SERVS., FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 29 (2015); see also Nicholas Haysom, Policing the Police: A Comparative Study of Control Mechanisms, 1989 ACTA JURIDICA 139, 159 (1989) (describing the "multiplicity" of police departments in the U.S., and concluding "the diversity of police forces leads

indicate that, in general, there is a set of "values and beliefs unique to the police organization that challenge and resist . . . change[.]"[18] Though many officers enter law enforcement with the intention of helping others,[19] policing is demanding and hierarchical, contributing to the challenge many departments face in recruiting and retaining officers.[20] Officers often face significant danger in the line of duty, including threats to their lives.[21] This reality, and a number of other factors,[22] contribute to the cultivation—at least in some departments—of what some scholars have described as an us versus-them tone,[23] or "warrior mindset."[24] The words of one Oakland police officer, who said he was "sick and tired of taking things from the 'animals and social misfits' he found on the street . . . [and] that he actually looks forward to when a person makes that [sic] error

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to an equally diverse range of models for policing style" and therefore "comments on police in the United States tend to be unhelpful generalizations").

[17]   Culture is the "characteristic rhythm[s], shape, and feel" of an organization. DIAMOND & ALLCORN, *supra* note 13, at 31; *see also* Danişman, *supra* note 11, at 214 (defining culture as a "set of understandings").

[18]   *See* Yusuf Yuksel, *Organizational Change: The Case of the New York Police Department*, 11 EUR. SCI. J. 428, 428 (May 2015) (citing J. Wood, *Cultural Change in the Governance of Security*, 14 POLICING & SOC'Y 31 (2004), Janet Chan, *Changing Police Culture*, 36 BRIT. J. CRIMINOLOGY 109 (1996), J. C. BARKER, DANGER, DUTY, AND DISILLUSION (1999), J. Van Maanen, *Breaking In: A Consideration of Organizational Socialization*, in HANDBOOK OF WORK, ORGANIZATION, AND SOCIETY (R. Dubin ed., 1975), PETER K. MANNING, POLICE WORK: THE SOCIAL ORGANIZATION OF POLICING (1977), F. Siegel, *Community policing, Chicago style by Wesley G. Skogan & Susan M. Hartnett*, reviewing TURNAROUND: HOW AMERICA'S TOP COP REVERSED THE CRIME EPIDEMIC, PUBLIC INTEREST 117 (1999)). For a brief review of the scholarship on whether there is indeed a subculture of policing, and what characteristics that subculture has, see Michael D. White et al., *Motivations for Becoming a Police Officer: Re-assessing Officer Attitudes and Job Satisfaction After Six Years on the Street*, 38 J. CRIM. JUST. 520, 527 (2010).

[19]   *See generally* White et al., *supra* note 18.

[20]   *See generally* Jeremy M. Wilson et al., *Police Recruitment and Retention for the New Millennium: The State of Knowledge*, RAND Ctr. On Quality Policing (2010), http://www.rand.org/pubs/monographs/MG959.html.

[21]   *See, e.g.*, Officer Down Memorial Page, https://www.odmp.org/ [https://perma.cc/4U2E-HJSN].

[22]   Some studies suggest that the profession attracts individuals with authoritarian mentalities. *See* White et al., *supra* note 18, at 521, 526.

[23]   *See, e.g.*, Steve Herbert, *Police Subculture Reconsidered*, 36 CRIMINOLOGY 343, 343 (1998) ("Several authors emphasize the prevailing sense of rupture that officers believe exists between them and the general public, a 'we/they' mentality that courses through the police's social world.") (citing VICTOR KAPPELER ET AL., FORCES OF DEVIANCE: UNDERSTANDING THE DARK SIDE OF POLICING (1994), ARTHUR NIEDERHOFFER, BEHIND THE SHIELD: THE POLICE IN URBAN SOCIETY 175 (1967), JEROME SKOLNICK, JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN A DEMOCRATIC SOCIETY (1966), and W. A. WESTLEY, VIOLENCE AND THE POLICE: A SOCIOLOGICAL STUDY OF LAW, CUSTOM, AND MORALITY xiii (1970)); Robert W. Benson, *Changing Police Culture: The Sine Qua Non of Reform*, 34 LOY. L.A. L. REV. 681, 687-90 (2000-2001) (discussing the roots and characteristics of police militarization); RADLEY BALKO, RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA'S POLICE FORCES (2013); *see also, e.g.*, Nick Pinto, *When Cops Break Bad: Inside a Police Force Gone Wild*, ROLLING STONE, Jan. 29, 2015, https://perma.cc/5YBD-7DU8 (discussing militarization of Albuquerque police). *See generally* JEROME H. SKOLNIK & JAMES J. FYFE, ABOVE THE LAW (1993); VICTOR E. KAPPELER ET AL., FORCES OF DEVIANCE: UNDERSTANDING THE DARK SIDE OF POLICING (1998).

[24]   *See* TASK FORCE, *supra* note 16, at 1, 11; Seth Stoughton, *Law Enforcement's "Warrior" Problem*, 128 HARV. L. REV. F. 225 (Apr. 10, 2015), http://harvardlawreview.org/2015/04/law-enforcements-warrior-problem/ [https://perma.cc/7LLZ-GU2X]; Joshua Holland, *Are We Training Cops to Be Hyper-Aggressive 'Warriors'?*, THE NATION (Nov. 10, 2015), http://www.thenation.com/article/are-we-training-cops-to-be-hyper-aggressive-warriors/ [https://perma.cc/GTW3-L9S9]; *cf.* U.S. DEP'T OF JUST., C.R. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 2 (Mar. 4, 2015), http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [https://perma.cc/PWH6-3Z3V] (describing and problematizing policing culture focused on citizens as potential revenue generators rather than "constituents to be protected").

that is serious enough for him to make an arrest[,]"[25] exemplify an extreme version of this mindset.[26] This mentality may result in a tendency to escalate conflict,[27] or to employ arrest as the "preferred solution for any minor problem."[28]

Beyond the us-versus-them mentality, scholars have described "a cultural milieu that tolerates or even facilitates illegal practices,"[29] including the use of excessive force beyond that which is "objectively reasonable" to repel a deadly threat.[30] In some departments, use of excessive force, which disproportionately affects people of color, particularly black Americans,[31] along with other forms of misconduct,[32] may not only unpunished, but be condoned as necessary.[33] The Department of Justice reports on the Baltimore and Chicago Police Departments document

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[25]   *Id.* at 59.

[26]   *Cf.* Wesley Lowery & Kimberly Kindy, *These Are the Racially Charged E-mails that Got 3 Ferguson Police and Court Officials Fired*, WASH. POST (Apr. 3, 2015), http://www.washingtonpost.com/news/post-nation/wp/2015/04/03/these-are-the-racist-e-mails-that-got-3-ferguson-police-and-court-officials-fired/ [https://perma.cc/JUQ7-D32B] (discussing emails sent from Ferguson Police Department email addresses containing explicitly racist remarks); Pinto, *supra* note 23 (discussing police killings and impunity in Albuquerque and elsewhere).

[27]   *See, e.g.*, Lorie A. Fridell & Arnold Binder, *Police Officer Decisionmaking in Potentially Violent Confrontations*, 20 J. CRIM. JUST. 385, 397-98 (1992) (finding that scenarios in which officers shot community members, as compared to similar situations in which officers did not, more often involved "verbal interactions that make the subject angrier and result in noncompliance"); *see also* HANS TOCH, ORGANIZATIONAL CHANGE THROUGH INDIVIDUAL EMPOWERMENT: APPLYING SOCIAL PSYCHOLOGY IN PRISONS AND POLICING 57, 60 (2014) (describing an Oakland Police Department peer review panel's attribution of one officer's tendency to "take immediate action (often physical in nature) when a subject would fail to comply immediately with his verbal directions" to the officer's perception "that his authority . . . was being challenged by [such] citizens.").

[28]   *See* TOCH, *supra* note 27.

[29]   John B. Gould & Stephen D. Mastrofski, *Suspect Searches: Assessing Police Behavior Under the U.S. Constitution*, 3 CRIMINOLOGY & PUB. POL'Y 315, 323 (2004) (citing CITY OF N.Y., COMM'N TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION & THE ANTI-CORRUPTION PROCS. OF THE POLICE DEP'T, COMMISSION REPORT (1994)).

[30]   *See* RICHARD M. THOMPSON II, CONG. RESEARCH SERV., POLICE USE OF FORCE: RULES, REMEDIES, AND REFORMS 3-8 (2015).

[31]   *See, e.g.*, Leah Libresco, *Being Arrested Is Nearly Twice as Deadly for African-Americans as Whites*, FIVETHIRTYEIGHT, Jul. 23, 2015, http://fivethirtyeight.com/datalab/being-arrested-is-nearly-twice-as-deadly-for-african-americans-as-whites/ [https://perma.cc/7CBB-B9K5] (showing that blacks are nearly twice as likely than whites to be killed by police during arrests or while in custody); Reuben Fischer-Baum & Carl Bialik, *Blacks Are Killed by Police at a Higher Rate in South Carolina and the U.S.*, FIVETHIRTYEIGHT, Apr. 8, 2015, http://fivethirtyeight.com/datalab/blacks-are-killed-at-a-higher-rate-in-south-carolina-and-the-u-s/ [https://perma.cc/C9AA-YLUM] (finding that black citizens were overrepresented among unarmed civilians killed by police between March 2014 and March 2015); HOLMES & SMITH, *supra* note 4, at vii, 5, 8-11 (stating that studies demonstrate a broad pattern of civil rights criminal complaints in large cities with relatively large racial/ethnic minority populations).

[32]   *See* WALKER, *supra* note 2, at 71-73, 78 (stating that the lack of a culture of accountability results in a tendency to turn away citizens attempting to file complaints, fail to adequately investigate accusations of misconduct, and fail to punish officers who have committed misconduct); *see also* Pinto, *supra* note 23 (noting a dearth in Department of Justice investigations of police civil rights violations and a lack of reliable statistics on police killings); *see also* HOLMES & SMITH, *supra* note 4, at viii (contending that such practices "are deeply embedded in the police subculture").

[33]   *See* HOLMES & SMITH, *supra* note 4, at 7; WALKER, *supra* note 2, at 4 (quoting Barbara Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 455, 455) (arguing that the culture "facilitates and rewards [this] violent conduct"); MERRICK BOBB, L.A. CNTY. SHERIFF'S DEP'T, 15TH SEMIANNUAL REPORT 10 (2002).

specific examples of this culture.[34] Such a culture is clearly incompatible with the community-oriented policing practice[35] that many police reform efforts around the country have tried to implement over the years.[36]

B.   Explanations

Studies attempting to isolate the causes of this behavior and culture tend to attribute it to several types of factors: (1) sociological or situational, (2) psychological or individual, and (3) organizational.[37] The first emphasizes the situational dynamics perceived by the officer, such as the race, gender, and demeanor of the citizens; the second focuses on the characteristics of the officer, including race, personality, and bias; and the third suggests that police departments' "organizational properties," including subculture and administrative controls, shape officers' behavior, including the likelihood that they will use excessive force.[38] There is evidence that each factor plays a role.[39] For instance, William A. Westley's work shows that police behavior in the

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[34]   *See* U.S. Dep't of Justice Civil Rights Div., Investigation of the Baltimore City Police Department 139-53 (Aug. 10, 2016), https://www.justice.gov/opa/file/883366/download [https://perma.cc/3UHR-QKM7]; U.S. Dep't of Justice Civil Rights Div. & U.S. Attorney's Office N. Dist. of Ill., Investigation of the Chicago Police Department 50-56 (Jan. 13, 2017), https://www.justice.gov/opa/file/925846/download [https://perma.cc/XH2T-L59S].

[35]   *See* Anthony LaRose et al., *Value Change Among Police Recruits in Mexico at a Time of Organizational Reform: A Follow-Up Study Using Rokeach Value Indicators*, 34 INT'L J. COMP. & APPLIED CRIM. JUST. 53, 54 (2010) https://perma.cc/GX7N-26W7 (defining community policing as an effort "to reduce the social distance between the police and the policed as a means of empowering both, in an effort to address the root causes of physical and social disorder.").

[36]   *See generally* Wycoff & Skogan, *supra* note 14; G. Kelling & M. Moore, *From Political Reform to Community: The Evolving Strategy of Police*, in COMMUNITY POLICING: RHETORIC OR REALITY? 1 (J. Greene, J. & S. Mastrofski eds., 1988); *see also* Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 53 STAN. L. REV. 777, 803 (2000) (arguing that both cultural norms and legal rules should be used to influence behavior).

[37]   R.J. Friedrich, *Police Use of Force: Individuals, Situations, and Organizations*, 452 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 84 (1980); R. E. Worden, *The Causes of Police Brutality: Theory and Evidence on Police Use of Force*, POLICE VIOLENCE: UNDERSTANDING AND CONTROLLING POLICE ABUSE OF FORCE 23-29 (A.W. Geller & Hans Toch eds., 1996); *see also* Joel H. Garner et al., *Characteristics Associated with the Prevalence and Severity of Force Used by the Police*, 19 JUST. Q. 705, 710 (2002); HOLMES & SMITH, *supra* note 4, at 112-113 (diagramming the interplay of various factors in use of excessive force); DIAMOND & ALLCORN, *supra* note 13, at 20 (summarizing, the "conceptual shift from individual to organizational psychology [that] takes place in the acknowledgement of patterned, repetitive, and collective actions that shape and characterize organizational culture").

[38]   HOLMES & SMITH, *supra* note 4, at 7-8.

[39]   *See, e.g.*, Brad W. Smith, *Structural and Organizational Predictors of Homicide by Police*, 27 POLICING INT'L J. POLICE STRAT. & MGMT. 539, 550-53 (2004) (finding situational factors such as "racial threat"—proportion of African American residents in a city—and community violence—violent crime rate, and organizational factors such as number of hours of field training—to be positively correlated with police killings of civilians); William C. Bailey, *Less-Than-Lethal Weapons and Police-Citizen Killings in US Urban Areas*, 42 CRIME & DELINQ. 535, 547-550 (1996) (showing there is no evidence that less-than-lethal weapons help prevent police-citizen killings); Smith, *supra*, at 542-44 (listing studies showing the predictiveness of situational factors in police brutality incidents); *id.* at 535-538 (listing studies showing the influence of organizational factors in such incidents); HOLMES & SMITH, *supra* note 4, at 7 ("The quasi-military structure of policing, including the deployment of personal weapons arsenals and extensive training in the use of force, undoubtedly sets the stage for such transgressions") (citing M. CHAMBLISS, POWER, POLITICS, AND CRIME (2001) and WESTLEY, *supra* note 23).

community "reflect[s] officers' concerns, grounded in informal organizational norms [(organizational)], about the maintenance of authority and respect": their belief that black people are prone to criminality and more threatening to police authority (individual) leads to their use of extra-legal force in situations involving black citizens perceived as disrespecting police (situational).[40]

Without taking one particular view of what explains the culture and corresponding behavior, this article contends that organizational change efforts that incorporate all three factors—one that facilitates individuals' examination of their own responses to situational stimuli, allowing them to shift their perspective—can be particularly impactful. Moreover, it argues that organizational change efforts will continue to fall short if they fail to shift policing *culture*, not just its design, practices, or the bad apples within it. That is consistent with findings from social psychology research indicating a strong relationship between employee values, organizational culture, and the success or failure of organizational change efforts.[41]

It is worth noting that the disparate treatment of people of color is not unique to police,[42] leading some to conclude that without broader societal change, changing the culture of policing may be impossible.[43] While it may be true that complete transformation is not a feasible short-term goal, this article assumes that *some* change is possible, and it is worth exploring how that change can be achieved.

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[40]   HOLMES & SMITH, *supra* note 4, at 8 (citing W. A. Westley, *Violence and the Police*, 59 AM. J. OF SOC. 34 (1953) and WESTLEY, *supra* note 23).

[41]   *See, e.g.*, Leanne Fiftal Alarid, *Law Enforcement Departments as Learning Organizations: Argyris' Theory as a Framework for Implementing Community-Oriented Policing*, 2 POLICE Q., 321, 333 (2000) (arguing that successful organizational changes requires individuals within an organization to change their old ways of thinking); John Amis et al., *Values and Organizational Change*. 38 J. OF APPLIED BEHAV. SCI. 436 (2002) (showing that when proposed organizational changes do not align with existing organizational culture, employees resist the change); M. Rokeach & S. Ball-Rokeach, *Stability and Change in American Value Priorities: 1968-1981*, 44 AM. PSYCHOL.*,* 777 (1989) (showing values in America remained constant over a thirteen year period); B. K. Spiker & E. Lesser, *We Have Met the Enemy*, 16 J. BUS. STRAT. 17 (1995); D. Waddell & A. S. Sohal, *Resistance: A Constructive Tool for Change Management*, 36 MGMT. DECISION 543 (1998).

[42]   A witness to the President's Task Force testified, "Bias is not limited to so-called 'bad people.' And it certainly is not limited to police officers. The problem is a widespread one that arises from history, from culture, and from racial inequalities that still pervade our society and are especially salient in the context of criminal justice." TASK FORCE, *supra* note 16, at 10 (citing Oral Testimony for the President's Task Force on 21st Century Policing (2015) (testimony of Jennifer Eberhardt), http://www.cops.usdoj.gov/pdf/taskforce/submissions/Eberhardt_Testimony_Submitted.pdf [https://perma.cc/277Y-XUE6]).

[43]   *See, e.g.*, HOLMES & SMITH, *supra* note 4, at 140-41 (voicing skepticism about the potential of "popular proposals" for organizational reform "because of the intractable qualities of the intergroup dynamics involved," and suggesting that breaking down barriers that separate racial/ethnic and social class groupings may be "avenues for meaningful change").

C.   Resistance to Change

When it comes to the policing organization, which is particularly resistant to change,[44] cultural change is particularly important. Yet attention to police culture has too often been missing from the organizational change equation, which explains, at least in part, why so many police reform efforts have failed.[45] For instance, as part of its settlement agreement ending a civil rights suit, the Philadelphia Police Department in 1996 instituted a use-of-force reporting system, but the department's established habits were a major obstacle to successful implementation.[46] Several years after the system's launch, an independent audit found "a deeply ingrained resistance to implementing the system[,]" including some commanders viewing controls over the use of force "with resentment, cynicism and suspicion" and others viewing the process as a "waste of time."[47] Consequently, the disciplinary process "has remained fundamentally the same for decades."[48]

In Washington, D.C., almost two years after signing a settlement agreement with the Department of Justice agreeing to develop a use-of-force reporting system in 2001,[49] the Metropolitan Police Department's rate of completion of required incident reports varied month to month from 25% to 86% due to "confusion" about the requirements and lack of a "culture of accountability."[50] The court-appointed monitor of the Oakland Police Department following the settlement of a police misconduct case, *Delphine Allen, et al., v. City of Oakland, et al.*,[51] made similar findings in its *Second Semi-Annual Report*.[52] The report found that the department was only in full compliance in four out of fifty tasks required by the agreement.[53] For example, the

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[44]   *See* Zhao, *supra* note 14, at 155-56 (citing Herman Goldstein, *Toward Community-Oriented Policing: Potential, Basic Requirements and Threshold Questions*, 33 CRIME & DELINQ. 6 (1987), ROBERT TROJANOWICZ & BONNIE BUCQUEROUX, COMMUNITY POLICING: A CONTEMPORARY PERSPECTIVE (1990), Robert Wasserman & Mark Moore, *Values in Policing*, 8 *Perspectives on Policing* (1988), Dennis Nowicki, *Mixed Messages*, in COMMUNITY POLICING: CONTEMPORARY READINGS 265 (G. Alpert & A. Piquero, eds., 1998), Jihong Zhao & Quint Thurman, *Community Policing: Where Are We Now?*, 43 CRIME & DELINQ. 345 (1997) (finding that after over ten years of changes toward community-oriented policing, the mean ratings of departmental functions—crime control, order maintenance, and provision of services—among 281 police agencies surveyed across the country were virtually identical to what they were a decade ago; they continue to reflect traditional law enforcement and crime fighting), Susan Sadd & Randolph Grinc, *Innovative Neighborhood Oriented Policing: An Evaluation of Community Policing Programs in Eight Cities*, in THE CHALLENGE OF COMMUNITY POLICING: TESTING THE PROMISES, *supra* note 14, at 35 ("[P]atrol officers are particularly resistant to the transition to community policing because community policing seeks to redefine their role and the way they perform their duties")).

[45]   *Cf.*, Zhao et al., *supra* note 8, at 32 (finding that police values orientation remained nearly constant during the thirty years preceding the study).

[46]   WALKER, *supra* note 2, at 69-70 (citing Philadelphia, Integrity & Accountability Off., *Discipline System* (1999), at 6, 52).

[47]   *Id.* at 69 (citing Philadelphia, Integrity & Accountability Off., *Use of Force*, at 12).

[48]   *Id.* at 69-70 (citing Philadelphia, Integrity & Accountability Off., *Discipline System* (1999), at 6).

[49]   *See* Univ. of Mich. Law Sch., Case Profile: DOJ Investigation of the Washington, D.C., Metropolitan Police Department, Civil Rights Investigation Clearinghouse, https://www.clearinghouse.net/detail.php?id=1026 [https://perma.cc/5VR9-ELQJ].

[50]   WALKER, *supra* note 2, at 184-85.

[51]   For full records of the follow-up reports, see City of Oakland, NSA Archives, http://www2.oaklandnet.com/government/o/OPD/OAK059862 [https://perma.cc/A9AD-KKBA].

[52]   Oakland Police Dept., Negotiated Settlement Agreement: Second Semi-Annual Report (Feb. 18, 2004), http://www2.oaklandnet.com/oakca1/groups/police/documents/report/dowd006403.pdf [https://perma.cc/S26X-XV88].

[53]   *Id.* at 4.

decree required the police to complete a report about every stop, investigation, and detention.[54] The monitor found a compliance rate of only 26%, which officers attributed to insufficient training and the time-consuming nature of the forms.[55] These are but a few examples of numerous change efforts nationwide that have been met with resistance.[56]

D.   The Force of Tomorrow

Recognizing the cultural shift required to enable lasting change in policing, a task force convened by President Obama to study the problem of policing[57] listed, as its first recommendation: "Law enforcement culture should embrace a guardian—rather than a warrior—mindset."[58] According to the Task Force's vision, that means "adopt[ing] procedural justice as the guiding principle for internal and external policies and practices,"[59] "establish[ing] a culture of transparency and accountability to build public trust and legitimacy,"[60] "promot[ing] public trust by initiating positive non-enforcement activities to engage communities that typically have high rates of investigative and enforcement involvement with government agencies,"[61] and espousing "a culture and practice . . . that reflects the values of protection and promotion of the dignity of all."[62] This is precisely the type of culture that would provide fertile ground for other police reform efforts—such as a shift to community-oriented policing[63]—including the other changes proposed by the Task Force.[64] While a number of police chiefs have already declared their intention to make such a cultural change,[65] in general, that prescription looks very different from

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[54]   *Id.* at 81.

[55]   *Id.* at 82; WALKER, *supra* note 2, at *186* (concluding, "[t]he officers' comments . . . reflect the traditional police organizational culture that is disinterested in accountability. . . . These are the nitty-gritty aspects of organizational culture that need to change to achieve meaningful accountability.").

[56]   *See, e.g.*, *id.* at 179 (listing failed organizational change efforts).

[57]   The White House, Office of the Press Secretary, *Fact Sheet: Task Force on 21st Century Policing* (Dec. 18, 2014), https://www.whitehouse.gov/the-press-office/2014/12/18/fact-sheet-task-force-21st-century-policing [https://perma.cc/A39W-555Q].

[58]   TASK FORCE, *supra* note 16, at 1.

[59]   *Id.* The Task Force later defines procedurally just behavior as involving the following four principles: "treating people with dignity and respect . . . giving individuals 'voice' during encounters . . . being neutral and transparent in decision making . . . conveying trustworthy motives[.]" *Id.* at 10.

[60]   *Id.* at 1.

[61]   *Id.* at 2.

[62]   *Id.* at 3.

[63]   *See* Zhao, *supra* note 14, at 153-54, 165 (citing John E. Eck & Dennis P. Rosenbaum, *The New Police Order: Effectiveness, Equity, and Efficiency in Community Policing*, in THE CHALLENGE OF COMMUNITY POLICING: TESTING THE PROMISES, *supra* note 14, at 3 (finding that community-oriented policing requires values of social equity and fairness), HERMAN GOLDSTEIN, POLICING A FREE SOCIETY (1977), and TROJANOWICZ & BUCQUEROUX, *supra* note 44).

[64]   Besides community policing, the Task Force's other recommended changes include, for example, the implementation of policies aligned with community values (e.g. around use of force), and use of technology and social media in accordance with defined purposes. TASK FORCE, *supra* note 16, at 2.

[65]   *See* OFFICE OF CMTY. ORIENTED POLICING SERVS., THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING: ONE YEAR PROGRESS REPORT 6-7 (2016), http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_Annual_Report.pdf; U.S. Dep't of Just. Cmty. Oriented Policing Servs., Success Story Map, https://cops.usdoj.gov/Default.asp?Item=2827; *see also, e.g.*, Amy McConnell Schaarsmith, *Incoming City Police Chief Says He Wants to Change the Bureau's Culture*, MCCLATCHY - TRIBUNE BUSINESS NEWS (Sept. 12, 2014) (Pittsbugh), https://perma.cc/HR8F-PMCD; Mike Blasky, *Oakland Police Becoming Example for Departments Seeking to Reform*, SANTA CRUZ SENTINEL (May 9, 2015), http://www.santacruzsentinel.com/general-news/20150509/oakland-police-

the predominant culture today.[66] Using the warrior-to-guardian proposal as a proxy for the type of cultural change a department might pursue as a requisite foundation for other policy and practice changes, the following section will explore the process that change management theory would recommend to facilitate such a shift.

II. A NEW WAY FORWARD: CHANGE MANAGEMENT

A. *Why Change Is Hard*

Culture change is difficult not only in police departments, but in all organizations.[67]

Social psychologists explain that resistance to change within an organization is a product of the trauma experienced by employees and the organization itself when there is an unexplained change in policy, procedure, or practice.[68] According to change management experts, when managers pursue change "under existing norms," the effort produces "a conflict in the norms themselves."[69] Thus, changing policing is not as simple as changing a policy, practice, or structure: it requires that officers "be resocialized into understanding their purpose."[70] It is this very quandary—how to "chang[e] a complex bureaucracy to achieve worthy goals"[71]—that organizational change research addresses.

B. *What Does It Take to Make a Switch*

"For individuals' behavior to change, you've got to influence not only their environment but their hearts and minds."[72] That is the mantra that change management gurus Chip and Dan Heath expound in their bestselling book, *Switch: How to Change Things When Change Is Hard*,[73] which research has confirmed to be true in the case of policing.[74] The challenge that the Heath brothers reference is often overlooked in organizational change efforts,[75] but is central to effective

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becoming-example-for-departments-seeking-to-reform [https://perma.cc/CTB3-SHWL] ("[Chief] Whent, at the helm for about two years, has been quietly chipping away at the agency's cowboy culture reputation.").

[66]   *See supra* pp. 5-8.

[67]   *See, e.g.*, WALKER, *supra* note 2, at 70 (discussing how police forces and other large organizations are often resistant to change).

[68]   *See, e.g.*, LLOYD C. WILLIAMS, ORGANIZATIONAL VIOLENCE: CREATING A PRESCRIPTION FOR CHANGE 5-6 (1994) (explaining how sudden changes in policy cause trauma for employees and the surrounding organization).

[69]   *See* KEGAN & LAHEY, *supra* note 10, at 26, n. 7 (quoting CHRIS ARGYRIS & DONALD A. SCHÖN, ORGANIZATIONAL LEARNING: A THEORY OF ACTION PERSPECTIVE 21 (1978)). To indicate the trauma-inducing nature of this type of organizational change process devoid of collaboration and inclusiveness, some call it "organizational violence." *See* WILLIAMS, *supra* note 61, at 6.

[70]   WALKER, *supra* note 2, at 184.

[71]   *Id.* (citing MALCOM M. FEELEY & EDWARD L. RUBIN, JUDICIAL POLICY MAKING AND THE MODERN STATE (1998)).

[72]   CHIP HEATH & DAN HEATH, SWITCH: HOW TO CHANGE THINGS WHEN CHANGE IS HARD 5 (2010).

[73]   *See generally id.* The idea of the dueling systems is based on "conventional wisdom in psychology" and behavioral economics, which calls the two systems "the Planner and the Doer." *See id.* at 6-7.

[74]   Sadd & Grinc, *supra* note 44, at 35 (finding that organizational change toward COP entails a fight for the "hearts and minds" of patrol officers, and that officers are "particularly resistant" to that transition because "community policing seeks to redefine their role and the way they perform their duties.").

[75]   *See* DIAMOND & ALLCORN, *supra* note 13, at 189 (claiming, "[p]sychological structure matters and is often overlooked in organizational change.").

change management: how to develop the capacity and motivation of individuals within a group, and the group as a whole, to enable change.[76]

Borrowing an analogy from psychologist Jonathan Haidt, the Heath brothers attribute the challenge with change to the inherent tension between humans' emotional side, an Elephant, and rational side, its Rider.[77] Each can sabotage change efforts—the Rider by spinning her wheels and overanalyzing and the Elephant by refusing to move.[78] While the Rider tries to control the Elephant, when the two disagree, the Rider, the rational, long-term thinking function, will lose. Successful efforts to stimulate behavior change, and organizational change, thus must appeal to both by "direct[ing] the Rider, motivat[ing] the Elephant, and shap[ing] the Path."[79]

Behavioral science research has demonstrated the effectiveness of this model in changing behavior at both the individual and organizational levels. For instance, research shows that techniques such as encouraging people to make a detailed plan about how they will vote, invoking their self-identification as a "voter," and telling them that turnout will be high can significantly increase their likelihood of voting.[80] In other words, identifying a clear goal and concrete steps to get there (directing the rider), cultivating identification as the type of person who would undertake the desired behavior (motivating the elephant), and tapping into peer pressure to spread a good habit (shaping the path) "nudge" people to do something they otherwise would not have done.[81]

The Elephant and Rider analogy provides a useful, if simplistic, frame with which to explore how future efforts to improve policing could more effectively shift its organizational culture to make change more permanent. The following sections will engage that framework, as well as others from social and organizational psychology, to examine existing efforts and make recommendations for future ones.

1.   Direct the Rider

According to the Heath Brothers, to convince the rational side of the brain to accept change one must "follow the bright spots[,]" "script the critical moves[,]" and "point to the destination."[82] In the policing context, this means articulating a clear vision of the end goal of the department's change process, replicating the work of other departments operating in similar contexts—or teams within the department—that have affected the desired change, and articulating the path to getting there.

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[76]   *See* KEGAN & LAHEY, *supra* note 10, at 26.

[77]   HEATH & HEATH, *supra* note 72, at 7 (citing JONATHAN HAIDT, THE HAPPINESS HYPOTHESIS: FINDING MODERN TRUTH IN ANCIENT WISDOM (2006)).

[78]   *Id.* at 7-8.

[79]   *Id.* at 19.

[80]   *See generally* David W. Nickerson & Todd Rogers, *Do You Have a Voting Plan? Implementation Intentions, Voter Turnout, and Organic Plan Making*, 21 PSYCHOL. SCI. 194 (2010) (detailed plan); C. Bryan et al., *Motivating Voter Turnout by Invoking the Self*, PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES 12653 (2011), https://perma.cc/6S7S-PXMB (self-identification); A.S. Gerber & Todd Rogers, *Descriptive Social Norms and Motivation to Vote: Everyone's Voting and so Should You,* 71 J. POL. 178 (2009), *available at* https://scholar.harvard.edu/todd_rogers/publications/descriptive-social-norms-and-motivation-vote-everybodys-voting-and-so [https://perma.cc/5NAU-65K6] (high turnout).

[81]   *See generally*, RICHARD R. THALER & CASS R. SUNSTEIN, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS (2009).

[82]   HEATH & HEATH, *supra* note 72, at 259.

Replicating the bright spots means focusing on what *is* working, understanding why, and cloning it.[83] There are several examples of police departments or teams that have made a change work. Whether or not they focused on the precise change explored in this article—moving from a warrior to a guardian culture—the process of examining them models the process that this article recommends a department that is attempting to shift its culture should undertake.

For example, it appears that something is working in Richmond, California. Historically one of the most violent cities in the Bay Area, Richmond, a city of 106,000, had less than one officer-involved shooting per year between 2008 and 2013—four total during that period—with no one killed by an officer since 2007.[84] During the same period, Oakland, a city of 400,000, had 33 officer-involved shootings, 20 of them fatal.[85] Less populous jurisdictions than Richmond, such as San Pablo, Antioch, Concord, and the area patrolled by Contra Costa Sheriff's Office, have had between two (San Pablo and Concord) and nine (Contra Costa) fatal officer-involved shootings.[86] Clearly, Richmond is worth a closer look.[87]

According to Lieutenant Louie Tirona, Richmond's head firearms and tactics instructor, the Richmond Police Department is distinct from its neighbors in its training rigor, its emphasis on communication with armed suspects, and its philosophy—and aligned policies[88]—that officers may use force only as a last resort.[89] It also differs in the frequency with which its officers receive firearm training and participate in role-playing scenarios for disarming suspects.[90] Since 2008, when officer-involved shootings dropped in the jurisdiction, the department has upped its trainings from yearly to monthly and moved from an "impact team" policing model to a "community policing" model focused on relationship building.[91] For comparison, Concord officers participate in use of force training semi-annually.[92] Richmond officers also "use a case

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[83]   *Id.* at 40-48.

[84]   Robert Rogers & David DeBolt, *Use of Deadly Force by Police Disappears on Richmond Streets*, EAST BAY TIMES (Sept. 6, 2014), http://www.contracostatimes.com/news/ci_26482775/use-deadly-force-by-police-disappears-richmond-streets [https://perma.cc/D4H7-L93G].

[85]   *Id.*

[86]   *See id.*

[87]   Violent crime was falling during this period in Richmond as well. *See* Steve Rubenstein, *Richmond Police Chief Chris Magnus to Head Tuscon Department*, S.F. CHRON. (Nov. 16, 2015, 7:35 PM), http://www.sfgate.com/bayarea/article/Richmond-Police-Chief-Chris-Magnus-headed-to-6636933.php [https://perma.cc/G5X7-2SJZ] (noting that homicides fell from 62 in 1991, to 47 in 2007 and 2009, to just 11 in 2015). Regardless, the fact that officer-involved shootings were so low in comparison to Richmond's population, and officer-involved shootings neighboring cities, suggests that it warrants exploration and study. Moreover, while no causal claims are being made here, it is possible that the tactics associated with less killings by police officers could be contributing to the reduced violent crime rates as well.

[88]   For instance, Richmond reviews all incidents in which force is used. *See id.*

[89]   *See id.*

[90]   *See id.*

[91]   Richmond Police Lieutenant Shawn Pickett describes "impact policing" as a model in which officers "roam" through crime-ridden neighborhoods seeking to make arrests. *Id.* Also note, the training tactics are similar to those Toch identifies as effective in the Oakland Police Department in the 1970's: the department tripled training time spent on "community-police relations," including de-escalation tactics, to 157 instructional hours, and employed role-playing throughout training, including videotape replay that allowed officers to review and critique their performances. *See* TOCH, *supra* note 27, at 57 (quoting Oakland Police Dep't, *Recruit Training Program: Progress Report* (n.d), at 13).

[92]   *See* Rogers & DeBolt, *supra* note 84.

study approach," studying and questioning use-of-force incidents that occurred in other jurisdictions.[93]

Another example of a bright spot involves a particularly effective use of a police accountability tool called an Early Intervention (EI) System.[94] In a large, unidentified police department, an EI system flagged an officer's frequent use of excessive force.[95] During the resulting counseling session, the officer described her fear of being hit in the face, which appeared to be causing her to lose control of encounters with citizens and then trigger her use of force to reassert control.[96] The EI panel sent her to training, where she was instructed in tactics that would allow her to maintain control while also protecting herself.[97] In another jurisdiction, an EI counseling session revealed that an officer was struggling financially.[98] The EI recommended that the officer seek professional financial consulting, which he did.[99] In both cases, the officers' performance improved considerably.[100] While police departments have historically been "punishment-oriented,"[101] in these instances, early identification, open conversation, and outside-the-box solutions appear to have been effective in instilling a desired change. Proponents suggest that the individual changes effected by these EI systems could have an even broader impact in shifting the role of sergeants towards one of guidance and support,[102] changing the organization's "formal and informal norms[,]" and moving the department culture towards enhanced accountability.[103] Despite recent criticism of EI systems in general,[104] the preceding inquiry into how such an intervention was effectively implemented in this department is precisely the type of examination the Heath brothers would recommend: neighboring police departments can learn from such "bright spots" operating in similar contexts, gain hope that change is possible, and borrow liberally.[105]

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[93]   See id.

[94]   See WALKER, supra note 2, at 102. EI systems are "data-based management tools . . . used to identify officers who exhibit potentially problematic behavior." They centralize and track data about citizens and departmental complaints, accidents, and use-of-force. See, e.g., HOLMES & SMITH, supra note 4, at 132. For more on EI systems see WALKER, supra note 2, at 100-34.

[95]   WALKER, supra note 2, at 102 (citing Commander responsible for EI system in an unidentified police department, Comments at Early Intervention Systems, State of the Art Conference (Jan. 2003)).

[96]   Id.

[97]   Id.

[98]   Id.

[99]   Id.

[100]   Id.

[101]   Id. at 104 (citing HERMAN GOLDSTEIN, POLICE CORRUPTION (1975)).

[102]   See id. at 133.

[103]   Id. at 120. For further reading about Chicago's work to develop an EI system, see Ted Gregory, U. of C. Researchers Use Data to Predict Police Misconduct, CHI. TRIB. (Aug. 18, 2016), http://www.chicagotribune.com/news/ct-big-data-police-misconduct-met-20160816-story.html.

[104]   See, e.g., Kimbriell Kelly, Can Big Data Stop Bad Cops? (Aug. 21, 2016), WASH. POST https://www.washingtonpost.com/investigations/can-big-data-stop-bad-cops/2016/08/21/12db0728-3fb6-11e6-a66f-aa6c1883b6b1_story.html?utm_term=.9a844e8ec6b7 [https://perma.cc/AVC3-FNCG].

[105]   HEATH & HEATH, supra note 72, at 48 ("These flashes of success—these bright spots—can illuminate the road map for action and spark the hope that change is possible.").

Beyond identifying and cloning successes, leaders of effective change management efforts should "point to the destination" and "script the critical moves."[106] An anecdote from the Fresno Police Department illustrates what that means, and what impact it can have. The department convened a subcommittee on use of force in 2001.[107] In its final report, the subcommittee declared that, although "many other departments did not track this [use-of-force] data for fear of providing plaintiff's [sic] attorneys with information that would assist them in suing the departments, . . . the ability to know what is going on outweighs the disadvantages of giving any information to plaintiff's [sic] attorneys."[108] In this report, the subcommittee is "sell[ing] the vision" of becoming a better department that is more accountable to the community, and targeting "a specific behavior that's within the control of the [department]"[109]: data collection and analysis. Accordingly, in 2003, the department issued and fully disclosed on its website a report on its use-of-force data correlated with a number of variables including race of suspect, type of force used, type of incident, day of the week, and suspect actions.[110] By "marry[ing] [its] long-term goal with short-term critical moves,"[111] the department convinced its officers that the change was feasible and worthwhile, anticipating their hesitations and opening a ramp to get them on board.[112]

2.   Motivate the Elephant

Beyond understanding the vision and next steps for change, individuals in a changing organization also need to believe that *they* can change, and that *who they are* is aligned with that change. The Heath brothers call this part of the process "find[ing] the feeling[,]" explaining that positive emotions such as interest and pride make individuals more open to accepting new ideas and taking on new types of tasks.[113] Organizational change experts Robert Kegan and Lisa Laskow Lahey discuss this emotional side of the change process in their seminal book, *Immunity to Change*.[114] As they explain elsewhere, overcoming immunity to change "asks people to call into question beliefs they've long held close . . . [and] to admit to painful, even embarrassing, feelings[.]"[115] This step is likely to be particularly challenging within a culture of masculinity, as in the police force,[116] but it is crucial to a successful change process.[117]

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[106]   *See* HEATH & HEATH, *supra* note 72, at 259; *see also* DIAMOND & ALLCORN, *supra* note 13, at 186 (noting that "[c]larifying the intervention process and method at the outset" enhances employees' "interpersonal security and safety").

[107]   *See* WALKER, *supra* note 2, at 188.

[108]   *Id.*

[109]   *See* HEATH & HEATH, *supra* note 72, at 84.

[110]   WALKER, *supra* note 2, at 189.

[111]   HEATH & HEATH, *supra* note 72, at 93.

[112]   The White House Police Data Initiative has encouraged agencies to release their data. Press Release, The White House, FACT SHEET: White House Police Data Initiative Highlights New Commitments (Apr. 21, 2016), https://www.whitehouse.gov/the-press-office/2016/04/22/fact-sheet-white-house-police-data-initiative-highlights-new-commitments [https://perma.cc/U6PC-V8UQ]. At the time of this writing, 129 agencies had agreed to do so. Police Found., Public Safety Portal, https://publicsafetydataportal.org/ [https://perma.cc/JC7J-8NE4].

[113]   *Id.* at 123.

[114]   KEGAN & LAHEY, *supra* note 10.

[115]   Robert Kegan & Lisa Laskow Lahey, *The Real Reason People Won't Change*, HARV. BUS. REV., Nov. 2001, at 86.

[116]   *See, e.g.*, Nigel Fielding, *Cop Canteen Culture*, in JUST BOYS DOING BUSINESS? MEN, MASCULINITIES AND CRIME (Tim Newburn & Elizabeth Stanko eds.) (1994); Vanessa Garcia, *Constructing the 'Other' within Police*

Some social psychologists suggest that this step must begin with "an organizational diagnosis confirmed by [participants],"[118] in other words, an opportunity to reflect on the state of the organization. Indeed, this is the first step that Bill Bratton undertook when he became chief of the New York Police Department:[119] he administered a survey about the cultural values and priorities of the organization, and discovered that the field officers shared his priorities.[120] To Bratton, this indicated an obvious opportunity for an alliance in the change-making process.[121] Bratton's process was more top-down than that advocated by social psychologists Michael Diamond and Seth Allcorn,[122] and the end goal was different from that proposed here.[123] However, Bratton's effective shift of the department's priorities[124] presents a valuable lesson in change management in police departments: people's values and priorities matter.[125]

Kegan and Lahey advocate a more holistic, individualized process, in which leaders facilitate employees' "honest introspection and candid disclosure" of their "competing commitments."[126] Competing commitments, as Kegan and Lahey define them, arise from the "big assumptions—deeply rooted beliefs about themselves and the world around them"[127] that hold people back from adapting and growing.[128] They argue that leaders cannot change organizations without "guiding [employees] through a productive process to bring their competing commitments to the surface, and helping them cope with the inner conflict that is preventing them from achieving their goals."[129]

Culture: An Analysis of a Deviant Unit within the Police Organization, 6 POLICE PRAC. & RES. 65, 69 (2005) ("[T]he multiplicity of police cultures identified in the [police] research are all rooted in masculinity.") (citation omitted); Herbert, *supra* note 18, at 343; *cf.* Garcia, *supra*, at 66 ("[P]olice tend to value the crime-fighting function, which is associated with masculinity, the most and the social service function, which is associated with femininity, the least.") (citations omitted).

[117]   *See* DIAMOND & ALLCORN, *supra* note 13, at 190.

[118]   *Id.* at 175. *Cf.* WALKER, *supra* note 2, at 187 (noting that effective accountability efforts require that a department first "undertake a rigorous and proactive self-assessment of its own accountability policies," and, second, "engage community representatives in that process and fully and publicly disclose what it is doing"); TOCH, *supra* note 27, at 94 (explaining that an intervention to change the parental nature of staff-inmate interactions at Penninghame Prison was aided by examining participants' relevant feelings and attitudes).

[119]   *See* Yuksel, *supra* note 16, at 432 (citing WILLIAM BRATTON & PETER KNOBLER, TURNAROUND: HOW AMERICA'S TOP COP REVERSED THE CRIME EPIDEMIC (1998); JOHN BUNTIN, ASSERTIVE POLICING, PLUMMETING CRIME: THE NYPD TAKES ON CRIME IN NEW YORK CITY (1999)).

[120]   *Id.*

[121]   *Id.*

[122]   *See generally* DIAMOND & ALLCORN, *supra* note 13.

[123]   *See supra* pp. 11-12 (discussing the change from a warrior mindset to a guardian mindset).

[124]   *See, e.g.*, Yuksel, *supra* note 16.

[125]   *See* Zhao et al., *Value Change*, *supra* note 14, at 153 (citing MICHAEL LIPSKY, STREET-LEVEL BUREAUCRACY: DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICE (1980) (individual values strongly influence behavior in a police organization); WILLIAM MUIR, POLICE: STREETCORNER POLITICIANS (1977) (individuals bring their values and beliefs to a police department)).

[126]   Kegan & Lahey, *supra* note 104, at 86.

[127]   *Id.* at 88.

[128]   *Id.* at 90 ("Because big assumptions are held as fact, they actually inform what people see, leading them to systematically (but unconsciously) attend to certain data and avoid or ignore other data.").

[129]   *Id.* at 92. *See also* DIAMOND & ALLCORN, *supra* note 13, at 9 ("[T]he human process of change in organizations frequently means that participants overcome their typical resistances to change by opening themselves up emotionally to their anxieties about separation and loss.").

The Oakland Police Department's Peer Review Panel, born in the 1970s, exemplifies the power of this process.[130] The brainchild of an officer previously identified as prone to excessive use of force, the program was modeled after a substance-abuse treatment program run by former addicts that took a "therapeutic approach designed to break down obdurate defenses." [131] The panel consisted of seven officers—all identified as "problem officers"—reviewing the behavioral patterns of other officers.[132] Panelists encouraged the participating officer to read his own arrest reports and engage in self-reflection.[133] As the officer who created the program explained, "You know, after he reads [some of his own arrest reports] somebody asks the questions. . . . And [he] would have to stop and think, 'Do I do that very often?'"[134] The department later institutionalized this program as the Conflict Management Section, which ran studies, action reviews, and other interventions to reduce conflict in police-citizen interactions.[135]

These programs mirror the process proposed by Kegan and Lahey in the way that they involve fellow members of the force communicating helpful intentions and facilitating the subject's own thinking and honest disclosure.[136] As Kegan and Lahey would predict, the programs were highly effective. During the years the program was in place, the department met its goals regarding the review subjects' performance and reduced its overall number of police-citizen confrontations.[137] The program's effectiveness lay in its ability to prove to both the subjects and participants on the panel that they were important change agents, a demonstration that "enhance[d] their self-esteem and commitment to the project."[138]

In other words, by focusing on the participation of those who will be affected by the change, these interventions cultivated a sense of identity and a "growth mindset"[139] that prepared participants to not only accept the change, but to *orchestrate* it.[140] This element of change

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[130]   Toch, *supra* note 27, at 72. Note: The program was also called the "Action Review Panel."

[131]   *Id.* at 51-55.

[132]   The subject officers had volunteered or been nominated by supervisors. *Id.* at 58-61.

[133]   *Id.* at 58-59.

[134]   *Id.* at 58-59 (citing Hans Toch & J.D. Grant, Police as Problem Solvers: How Frontline Workers Can Promote Organizational and Community Change 170 (2005)).

[135]   *Id.* at 71.

[136]   *See id.* at 61-62.

[137]   *Id.* at 62. Later, another police chief discarded the reforms in an effort to economize, Oakland went into receivership, and now, following a Department of Justice consent decree, is resisting change. *Id.* at 62 (quoting Norimitsu Onishi*, Overrun by Crime, Oakland Looks to Make Allies in Community*, N.Y. Times, at 11 (Mar. 11, 2013), http://www.nytimes.com/2013/03/11/us/to-cut-crime-oakland-to-reduce-size-of-police-districts.html [https://perma.cc/BWC7-594B]).

[138]   *Id.* at 65. Toch describes his intervention technique as follows:

(a) it involves the maladaptive person as participant rather than as client; (b) it does not require a categorization of the person's problem (such as substance abuse, mental illness, or learning disability) to define the service he or she receives; (c) it provides for gradations of environment in which to test developing competence; (d) it mobilizes teams of staff members, including staff primarily concerned with behavioral and mental health problems; (e) it relies on group process and group thinking to buttress staff influence; and (f) it accommodates tailor-made interventions to address individual patterns of maladaptation.

 Id. at 161 (quoting Hans Toch & Kenneth Adams, Acting Out: Maladaptive Behavior in Confinement 422 (2002)).

[139]   *See* Heath & Heath, *supra* note 72, at 164.

[140]   *Cf.* Toch, *supra* note 27, at 168 (quoting G.W. Allport, Personality and Social Encounter: Selected Essays 197 (1960)) ("[I]n focusing upon participation social psychology will also be advancing democracy, for

management is particularly important in the policing context, where those subject to the proposed change are often aware of a negative public image of themselves, which can "deflate [their] pride and self-esteem."[141] A recent study about the so-called "Ferguson effect," or reduced police motivation caused by negative publicity, confirms the impact of self-esteem on willingness to change in the context of policing.[142] The study shows that while the Ferguson effect is associated with a decreased willingness to adopt a community partnership ethic, the effect disappears when organizational justice and self-legitimacy are taken into account.[143] In other words, "officers who have confidence in their authority or perceive their agency as fair are more willing to partner with the community to solve problems, regardless of the effects of negative publicity."[144]

Even prior to this research, the Seattle Police Department implemented a program that can serve as a model for how to incorporate this insight into change management efforts. In 2004, the department's Office of Professional Accountability (OPA) launched an "unprecedented" internal outreach program, which involved OPA personally presenting the department's policies around investigations of citizen complaints to over 400 officers.[145] The presentations allowed officers to ask questions and raise concerns with OPA, which made them feel more involved in the department's accountability effort. While quantitative evaluations of this program are unavailable,[146] the results of the "Ferguson effect" study suggest that programs like Seattle's would increase officers' willingness to collaborate with the community, taking them one step away from the warrior mentality and one step towards that of a guardian.

As social psychologist Hans Toch explained, citing founder of social psychology Kurt Lewin and echoing Kegan and Lahey's findings, "The way to change people is to work through their resistances. It is here that participation becomes important, because participation is a way of making people face their hang-ups, so that they can give them up after they have worked them through."[147] In sum, "when people work hard on something, they get a stake in it."[148]

3.   Shape the Path

The final element of the Heath brothers' model is "shaping the path," or creating the conditions for success.[149] Effectively, this is the follow-through—it involves creating the conditions such that, once an individual has worked through their competing commitments,

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. . . the task of obtaining from the common man participation in matters affecting his own destiny is the central problem of democracy.").

[141]   *See id.* at 163 (quoting HANS TOCH & J.D. GRANT, REFORMING HUMAN SERVICES: CHANGE THROUGH PARTICIPATION 223 (1982)) (reciting from a participating correction officer's proposal for a model of prison reform similar to that proposed here for policing).

[142]   *See generally* Scott Wolfe & Justin Nix, *The Alleged "Ferguson Effect" and Police Willingness to Engage in Community Partnership*, 40 L. & HUM. BEHAV. 1 (2015), http://psycnet.apa.org/journals/lhb/40/1/1.pdf [https://perma.cc/Q66D-JEAA].

[143]   *See id.* at 7.

[144]   *See id.* at 1.

[145]   WALKER, *supra* note 2, at 190.

[146]   The report is available on the Seattle Police Department website. *Id.* at 191.

[147]   TOCH, *supra* note 27, at 68.

[148]   *Id.* at 69.

[149]   HEATH & HEATH, *supra* note 72, at 259.

change is the path of least resistance. Social psychology literature also reflects the importance of this element in change management, explaining that the process requires "'unfreez[ing]' old habits and 'freez[ing]' new ones."[150] Toch suggests practical tactics such as encouraging individuals to commit to tasks, orchestrating reward and "prod[ding]" by peers, and providing tools to launch the change.[151] The Heath brothers advocate tweaking the environment, building habits, and helping behavior spread through peer pressure.[152]

This element in particular is very context-specific, and will not be explored at length here. However, to briefly demonstrate the concept, it is worth revisiting several of the examples discussed in previous sections. For instance, Oakland's peer review panels were effective because they were able to harness the power of peer influence, emphasize behavior change, and reinforce attitudes consistent with the desired culture.[153] "Behavior is contagious,"[154] and those participating in the panel, formerly those whose behavior was most inconsistent with the culture that the force wanted to move towards, were both practicing the desirable behavior themselves and modeling it for others. Moreover, by investing time and effort into the concept, the panel members and, perhaps to a lesser extent, their subjects, were "get[ting] a stake in it."[155]

Similarly, Richmond's drop in police shootings and killings corresponded with the new chief's decision to switch from "impact teams" roving high-crime neighborhoods in search of arrests to a community-oriented model focused on relationship building.[156] Fresno began its reform effort by disbanding its most militaristic unit.[157] Each change tweaked the officers' environment and habits: instead of entering communities in an offensive stance, Richmond police presumably became accustomed to engaging with the community in positive ways.

On the contrary, the Washington, D.C., Metropolitan Police Department's failure to complete required incident reports can be attributed in part to the department's failure to "chang[e] the routine habits of officers."[158] Had the department, for example, incorporated the incident reports into the officers' routine to the point that it became automatic, or began the change process by requiring only a short incident report and moved to a more in-depth one after officers were already in the habit of completing them, change might have been more feasible.

III. CONCLUSION

Changing behavior is neither easy nor impossible. Police departments, like any other organization, are "artifacts of human nature."[159] To change them requires changing the hearts and minds within them. As history has shown, without a concerted effort to motivate, grow, and guide officers toward their new guardian roles, organizational policy and practice changes designed to reduce the use of unnecessary force and make policing more responsive to community needs will be evanescent. This article advocates for employing a change management approach to shift

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[150] Toch, *supra* note 27, at 69.
[151] *Id.*
[152] Heath & Heath, *supra* note 72, at 259.
[153] *See* Toch, *supra* note 27, at 72 (quoting Darrel W. Stephens, Police Discipline: A Case for Change 17 (2011)).
[154] Heath & Heath, *supra* note 72, at 259.
[155] Toch, *supra* note 27, at 69.
[156] Rogers & DeBolt, *supra* note 84.
[157] Walker, *supra* note 2, at 187.
[158] *Id.* at 185.
[159] Diamond & Allcorn, *supra* note 13, at ix.

policing culture to one more fertile for such policy and practice changes. This approach requires "providing clear direction, ample motivation, and a supportive environment" for the change.[160] In short, officers' Riders, Elephants, and Paths must all be "aligned in support of the switch."[161] Even with such a process, change will be difficult and costly.[162] Working through resistance always is. But the alternative is more costly still.[163]

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[160]   HEATH & HEATH, *supra* note 72, at 255.

[161]   *Id.*

[162]   DIAMOND & ALLCORN, *supra* note 13, at 175.

[163]   *See, e.g.*, CHIKE CROSLIN ET AL., HARVARD BLACK LAW STUDENTS ASSOCIATION, INDEPENDENT LENS: TOWARD TRANSPARENCY, ACCOUNTABILITY, AND EFFECTIVENESS IN POLICE TACTICS (Apr. 2015), at 9-10 (discussing the costs of police misconduct for several municipalities and communities), http://charleshamiltonhouston.org/wp-content/uploads/2015/05/Independent-Lens-Cvr-Guts.pdf [https://perma.cc/QZ6U-3AVM]; *see also* Shaun King, *Cash-strapped Chicago Has Paid Half a Billion Dollars in Police Brutality Settlements Since 2004*, DAILY KOS (Apr. 27, 2015, 12:27PM), http://www.dailykos.com/story/2015/04/27/1380655/-Cash-strapped-Chicago-admits-it-has-paid-half-a-billion-in-police-brutality-settlements-since-2004 [https://perma.cc/X9WT-2XTV] (discussing Chicago's admission that it has over $521 million in settlements and legal fees related to police misconduct over the past 10 years); *cf.* TOCH, *supra* note 27, at 72 (noting that when Oakland abolished the peer review panels and program "the result was extremely expensive," including a $10 million settlement regarding police brutality complaints).