

Special Report Regarding Racial Profiling in the Town of Brookside's Traffic Enforcement Program

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Executive Summary

The Town of Brookside engaged our firm to conduct an inquiry regarding whether the Brookside Police Department participated in racial profiling in the administration of its traffic enforcement program. Racial profiling is the use of a person's race or ethnicity as a *proxy* for suspicion of involvement in some form of criminal activity or threat. It involves police use of a traffic stop for a minor traffic infraction as a "pretext" to initiate further police actions such as a search of an individual's motor vehicle, person, or both for guns, drugs, or other types of contraband.

We examined the Town of Brookside's compilation of over 13,000 pages of traffic citations issued from 2018 through 2021. Our examination covered a spectrum of traffic-related offenses including equipment defects; inadequate licensing, registration, and insurance coverage; moving violations; and potentially criminal offenses such as carrying concealed weapons without a license, driving under the influence of drug or alcohol ("DUIs"), and drug-related charges. We narrowed the town's database from approximately 13,000 citations to 7,187 traffic stops. This is the primary pool of data on which our statistical analysis is based.

According to researchers, a fairly administered traffic enforcement program should result in the issuance of citations roughly mirroring the local community's racial and ethnic proportions. Significant disparities between the actual number of citations issued between groups may be a red flag suggestive of racial profiling.

Our analysis of Brookside's traffic citations did not produce strong statistical evidence of racial profiling in traffic stops. Disparities in the rate at which drivers were stopped do not appear to be significantly different from the rate in which drivers' racial and ethnic groups populate

Jefferson County. However, our analysis did find significant evidence of “selective enforcement” with respect to warning tickets. This analysis suggests that whites receive substantially more favorable treatment with respect to warnings than other groups. While the population gap between blacks and whites in Jefferson County is approximately 7%, the disparity in warnings is almost 26%. The disparity in warnings is strong evidence of selective enforcement, as officer discretion is exercised to excuse whites with a simple warning and to enforce violations against other groups in a disproportionate manner.

Drug trafficking law enforcement played an outsized role in creating Brookside’s ticketing-for-cash perception. Law enforcement and media reports have long detailed the scope of Alabama’s drug problem, especially in rural areas. According to the town, an increase in Brookside’s police force was necessary to combat dangerous drug activity, to provide sufficient backup, and to ensure that officers would not be forced to go on patrols alone.

While Brookside’s aggressive reaction to the invasion of the town by drugs is understandable, the strategy of using traffic enforcement tools to fight drug trafficking was overly broad. Certainly, it resulted in thousands of citations and hundreds of arrests. It also involved over-policing and unnecessarily endangered ordinary citizens and many police officers.

We recommend that Police Department leadership strategically identify drug enforcement targets by prioritizing the most dangerous drugs; that is, drugs posing the most serious threats to human life and property. Fentanyl and other opioids now present the greatest threat in Alabama. Methamphetamines are next, followed by a range of narcotics such as controlled prescription drugs, heroin, marijuana, new psychoactive drugs, and cocaine. Marijuana generates fewer violent

crimes than meth and fentanyl. Yet, the possession of marijuana by end users – along with paraphernalia used to inhale the drug – is the most common basis for drug arrests in Brookside.

We recommend policies and officer training focused on minimizing racial profiling, protecting constitutional rights, guiding the exercise of police discretion, elevating town and police leadership skills, improving professionalism, and avoiding over-policing. We also encourage more partnerships between Brookside and other local, state, and federal law enforcement agencies to combat regional and statewide drug trafficking activity.

Introduction

Recent news reports have cast light on alleged policing-for-profit practices by the Brookside Police Department. The news stories report that the Police Department positioned cruisers on or near an I-22 exit and ticketed unsuspecting drivers for charges ranging from minor traffic offenses such as improper tag lights to more serious criminal charges such as possessing drugs and carrying concealed weapons without a permit.

Two town hall meetings brought a parade of witnesses who shared stories of alleged overreaching police tactics and possible constitutional violations. Concern about Brookside's practices has been expressed by public officials including Alabama's Lieutenant Governor, Attorney General, State Legislators, State Auditor, and local officials such as the Jefferson County District Attorney, the Jefferson County Sheriff's Department, and at least one Jefferson County Circuit Judge. The U.S. Department of Justice recently filed a brief in a civil case in support of granting class status to a putative class of plaintiffs asserting claims against the Brookside Police Department. We have intentionally avoided commenting on pending court cases.¹

Many of the town hall speakers who expressed concern about possible racial profiling and discriminatory treatment in connection with their own or family members' traffic stops were

¹ Since at least May 2020, Brookside has defended litigation involving its traffic enforcement practices *See, e.g.*, Victoria G. Brumlow v. Town of Brookside and Michael Jones, Case No. 2:20-cv-00650-GMB, U.S. District Court for the Northern District of Alabama (filed May 8, 2020); *see also* Sean Wattson v. Town of Brookside, Alabama, Case No. 2:21-cv-00649-AMM, U.S. District Court for the Northern District of Alabama (filed May 7, 2021); Victoria G. Brumlow v. Town of Brookside and Michael Jones, Case No. 2:20-cv-00650-GMB, U.S. District Court for the Northern District of Alabama (filed May 8, 2020); Brittany Coleman, Chekeithia Grant, and Alexis Thomas v. Town of Brookside, Jett's Towing, and Marcus Sellers, Case No. 2:22-cv-00423-NAD, U.S. District Court for the Northern District of Alabama (filed April 4, 2022); Emmanuel Wright v. Michael Jones, Mike Bryan, and Ivory Price, 01-CV-2022-900890.00, Circuit Court of Jefferson County, Alabama (filed March 25, 2022); Jori C. Jones v. Town of Brookside and Michael Jones, 01-CV-2022-900359.00, Circuit Court of Jefferson County, Alabama (filed May 7, 2022).

African Americans. As a result of these racial targeting allegations, the town of Brookside engaged our firm to investigate racial profiling concerns. Accordingly, we reviewed the available evidence from Brookside records, scholarly journals, professional publications, census reports, Alabama crime studies, as well as legislative and law enforcement reports from other states to determine whether the Brookside Police Department engaged in a pattern and practice of racial profiling African American, Hispanic, and other drivers. We now summarize the information consulted and discuss the conclusions reached.

I. What is Racial Profiling?

In essence, racial profiling by law enforcement, or others including private citizens, is the use of a person's race or ethnicity as a proxy for suspicion of involvement in some form of criminal activity or threat. Some scholars suggest the police will use a traffic stop for a minor traffic infraction, or the tactic known as "stop and talk" in relation to pedestrian stops, as a "pretext" to initiate further police actions such as a search of an individual's motor vehicle, person, or both for guns, drugs, or other types of contraband.²

Several state laws now prohibit racial profiling. Arkansas's state law is a typical example:

- (a) As used in this subchapter, "racial profiling" means the practice of a law enforcement officer's relying to any degree on race, ethnicity, national origin, or religion in selecting which individuals to subject to routine investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity.³

Texas has a long-standing statute:

In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.⁴

Acts 2001, 77th Leg., ch. 947, Sec. 2, eff. Sept. 1, 2001.

² See Ronnie A. Dunn, *Racial Profiling: A Persistent Civil Rights Challenge Even in the Twenty-First Century*, 66 Case W. Rsr. L. Rev. 957, 961-62 (2016); <https://scholarlycommons.law.case.edu/caselrev/vol66/iss4/7>, citing Ronnie A. Dunn & W. L. Reed, *Racial Profiling: Causes & Consequences* 15 (2011); David A. Harris, *Particularized Suspicion, Categorical Judgments: Supreme Court Rhetoric Versus Lower Court Reality Under Terry v. Ohio*, 72 St. John's L. Rev. 975, 1017-19 (1998). 19. See generally Ronnie A. Dunn, *Racial Profiling and Stop-and-Frisk: What's in a Name?* in *The American Mosaic: The African American Experience*, <http://africanamerican2.abc-clio.com/>. 20. 959 F. Supp. 2d 668 (S.D.N.Y. 2013). 21. Id. at 680. 22. Christine Eith & Matthew R. Durose, U.S. Dep't of Justice, Office of Justice Programs: *Contacts Between Police and the Public*, 2008 3 (2011); <http://www.bjs.gov/content/pub/pdf/cpp08.pdf> [<https://perma.cc/NBQ8-S9QZ>].

³ 2020 Arkansas Code--AR Code § 12-12-1401 (2020)

⁴ 2021 Texas Statutes--TX Code Crim Pro art 3.05 (2021)

Many states require the detailed collection of demographic and other data to facilitate the analysis of whether patterns of racial profiling exist. The state of Missouri, among others, requires police departments to report certain information following each stop:

Racial profiling - minority group defined - reporting requirements - annual report - review of findings - failure to comply - funds for audio-visual equipment - sobriety check points exempt 1. As used in this section "minority group" means individuals of African, Hispanic, Native American or Asian descent.2. Each time a peace officer stops a driver of a motor vehicle, that officer shall report the following information to the law enforcement agency that employs the officer:(1) The age, gender and race or minority group of the individual stopped;(2) The reasons for the stop;(3) Whether a search was conducted as a result of the stop;(4) If a search was conducted, whether the individual consented to the search, the probable cause for the search, whether the person was searched, whether the person's property was searched, and the duration of the search;(5) Whether any contraband was discovered in the course of the search and the type of any contraband discovered;(6) Whether any warning or citation was issued as a result of the stop;(7) If a warning or citation was issued, the violation charged or warning provided;(8) Whether an arrest was made as a result of either the stop or the search;(9) If an arrest was made, the crime charged; and(10) The location of the stop.

Missouri and other states require annual reports to be filed by local law enforcement agencies.⁵

⁵ Mo. Rev. Stat. § 590.650

3.(1) Each law enforcement agency shall compile the data described in subsection 2 of this section for the calendar year into a report to the attorney general.(2) Each law enforcement agency shall submit the report to the attorney general no later than March first of the following calendar year.(3) The attorney general shall determine the format that all law enforcement agencies shall use to submit the report.4.(1) The attorney general shall analyze the annual reports of law enforcement agencies required by this section and submit a report of the findings to the governor, the general assembly and each law enforcement agency no later than June first of each year.(2) The report of the attorney general shall include at least the following information for each agency:(a) The total number of vehicles stopped by peace officers during the previous calendar year;(b) The number and percentage of stopped motor vehicles that were driven by members of each particular minority group;(c) A comparison of the percentage of stopped motor vehicles driven by each minority group and the percentage of the state's population that each minority group comprises; and(d) A compilation of the information reported by law enforcement agencies pursuant to subsection 2 of this section.5. Each law enforcement agency shall adopt a policy on race-based traffic stops that:(1) Prohibits the practice of routinely stopping members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law;(2) Provides for periodic reviews by the law enforcement agency of the annual report of the attorney general required by subsection 4 of this section that:(a) Determine whether any peace officers of the law enforcement agency have a pattern of stopping members of minority groups for violations of vehicle laws in a number disproportionate to the population of minority groups residing or traveling within the jurisdiction of the law enforcement agency; and(b) If the review reveals a pattern, require an investigation to determine whether any peace officers of the law enforcement agency routinely stop members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law; and (3) Provides for appropriate counseling and training of any peace officer found to have engaged in race-based traffic stops within ninety days of the review.

Police departments around the country have established written policies prohibiting racial profiling. These policies define racial profiling and create mechanisms to enforce the policy. The Houston, Texas Police Department adopted the following anti-profiling policy which contains within it examples of profiling:

Racial Profiling Prohibited

The Houston Police Department has established a policy, General Order 600-42, concerning the prohibition of racial profiling as set out in state and federal laws concerning racial profiling and discriminatory practices in general. Discrimination in any form, including racial profiling, is strictly prohibited and the department will take immediate and appropriate action to investigate allegations of discrimination. This policy applies to all members of the Houston Police Department both classified and non-classified.

What is Racial Profiling?

Racial profiling is any law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or information identifying the individual as having engaged in criminal activity.

Examples of racial profiling include but are not limited to the following:

- Initiating a motor vehicle stop on a particular vehicle because of the race, ethnicity, or national origin of the driver of a vehicle
- Stopping or detaining the driver of a vehicle based on the determination that a person of that race, ethnicity, or national origin is unlikely to own or possess that specific make or model of vehicle
- Stopping or detaining an individual based on the determination that a person of that race, ethnicity, or national origin does not belong in a specific part of town or a specific place

[Policy available at <https://www.houstontx.gov/police/racialprof.html>]

II. Do Citations Issued by the Brookside Police Department Demonstrate a Pattern or Practice of Racial Profiling?

As we noted above, laws in other states prohibit the practice of routinely stopping members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law. If any law enforcement officers or agencies have a pattern of stopping members of minority groups for traffic violations in numbers disproportionate to the population of minority groups residing or traveling within the local jurisdiction, investigative action may result. *See* Mo. Rev. Stat. § 590.650 (3), *infra*, note 5. Simply put, selective enforcement is constitutionally impermissible.⁶

We examined the Town of Brookside's compilation of over 13,000 pages of traffic citations issued from 2018 through 2021. Our examination covered a spectrum of traffic-related offenses including equipment defects, license, insurance and registration violations, moving violations, and potentially criminal offenses such as carrying concealed weapons without a permit, DUIs, and drug-related charges.

⁶ *See* U.S. Department of Justice Civil Rights Division GUIDANCE REGARDING THE USE OF RACE BY FEDERAL LAW ENFORCEMENT AGENCIES (June 2003). "[T]he Constitution prohibits selective enforcement of the law based on considerations such as race." *Whren v. United States*, 517 U.S. 806, 813 (1996). Thus, for example, the decision of federal prosecutors "whether to prosecute may not be based on 'an unjustifiable standard such as race, religion, or other arbitrary classification.'" (4) *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (quoting *Oyler v. Boles*, 368 U.S. 448, 456 (1962)). The same is true of Federal law enforcement officers. Federal courts repeatedly have held that any general policy of "utiliz[ing] impermissible racial classifications in determining whom to stop, detain, and search" would violate the Equal Protection Clause. *Chavez v. Illinois State Police*, 251 F.3d 612, 635 (7th Cir. 2001). As the Sixth Circuit has explained, "[i]f law enforcement adopts a policy, employs a practice, or in a given situation takes steps to initiate an investigation of a citizen based solely upon that citizen's race, without more, then a violation of the Equal Protection Clause has occurred." *United States v. Avery*, 137 F.3d 343, 355 (6th Cir. 1997). "A person cannot become the target of a police investigation solely on the basis of skin color. Such selective law enforcement is forbidden." *Id.* at 354. As the Supreme Court has held, this constitutional prohibition against selective enforcement of the law based on race "draw[s] on 'ordinary equal protection standards.'" *Armstrong*, 517 U.S. at 465 (quoting *Wayte v. United States*, 470 U.S. 598, 608 (1985)). Thus, impermissible selective enforcement based on race occurs when the challenged policy has "a discriminatory effect and . . . was motivated by a discriminatory purpose." *Id.* (quoting *Wayte*, 470 U.S. at 608). (5) Put simply, "to the extent that race is used as a proxy" for criminality, "a racial stereotype requiring strict scrutiny is in operation." *Cf. Bush v. Vera*, 517 U.S. at 968 (plurality).

We separated the citations according to the racial categories reflected on the citation: White, Black, Hispanic, and Other. If a traffic stop resulted only in a single citation, we counted that citation as one stop/police encounter. If a traffic stop resulted in two or more citations, we counted that event as a single stop. This methodology eliminated the possibility of overcounting the number of traffic stops, an outcome that would likely result from counting each individual citation as a stop. For example, if a vehicle was stopped for a tag light violation, the driver might also be charged with other violations such as failure to wear a safety belt, an expired tag, driving with a suspended license, or failure to have evidence of proper vehicle registration or valid insurance. Although multiple citations were the outcome of the event, this encounter was a single stop in our analysis.

Our counting methodology allowed us to narrow the town's database from approximately 13,000 citations to 7,187 traffic stops.⁷ This was the primary pool of total stops on which our statistical analysis was based. We then compiled census information from the 2020 U.S. census report. We determined that the most appropriate method to interpret the data for racial profiling analytical purposes is the method adopted by some states in compiling annual racial profiling reports: by comparing the percentage of citations issued to each racial group to each group's percentage of the census count of the local population.⁸

⁷ These and other figures we derive from the database are inexact estimates, as the search tools available to us are imperfect.

⁸ See, e.g., Mo. Rev. Stat. § 590.650:

4.(1) The attorney general shall analyze the annual reports of law enforcement agencies required by this section and submit a report of the findings to the governor, the general assembly and each law enforcement agency no later than June first of each year.(2) The report of the attorney general shall include at least the following information for each agency:(a) **The total number of vehicles stopped by peace officers during the previous calendar year;**(b) **The number and percentage of stopped motor vehicles that were driven by members of each particular minority group;**(c) **A comparison of the percentage of stopped motor**

We are mindful of the many studies using various methodologies to analyze racial profiling.⁹ Most methodologies acknowledge that a fairly administered traffic enforcement program should result in the issuance of citations in roughly the same proportions that exist among racial and ethnic groups. As an illustration, researchers expect traffic enforcement programs in a community with a racial composition of 75% white, 15% black, 8% Hispanic, and 2% “other” minorities to result in citations distributed in approximately the same proportions: 75% white, 15% black, 8% Hispanic, and 2% other. The existence of a significant disparity between the actual number of citations issued between groups may be a red flag for the practice of racial profiling.

In the above example, if whites receive only 50% of the citations and blacks receive 40%, -- instead of the expected 75% and 15% -- the distribution pattern suggests that a deeper look is warranted to determine whether racial profiling played a role in the stop. Further inquiry could suggest an improper selective or discriminatory approach to traffic enforcement.

vehicles driven by each minority group and the percentage of the state's population that each minority group comprises...
(emphasis added)

⁹ See “Understanding Race Disparities in Vehicle Stops and Searches” (August 2021); <https://www.como.gov/wp-content/uploads/2021/08/Milyo-Disparities-Report-1.pdf>; 2020 MASSACHUSETTS UNIFORM CITATION DATA ANALYSIS REPORT, Salem State University and Worcester State University (February 7, 2022); <https://www.bostonherald.com/wp-content/uploads/2022/02/2020-Massachusetts-Uniform-Citation-Data-Analysis-Report.pdf>; Ronnie A. Dunn, *Racial Profiling: A Persistent Civil Rights Challenge Even in the Twenty-First Century*, 66 Case W. Rsr. L. Rev. 957 (2016); available at: <https://scholarlycommons.law.case.edu/caselrev/vol66/iss4/7>. In Alabama, the only available data is the information available on the Uniform Traffic Citation Form. Yet the data is not easily retrievable or extractable without substantial resources and technology. For example, some researchers have used a measure of the driving population within a selected section of the municipality or geographic area in question as the base or denominator against which the ticketing demographic data is compared. See Ronnie Dunn, “Measuring Racial Disparities in Traffic Ticketing Within Large Urban Jurisdictions,” *Public Performance & Management Review*, Vol. 32, No. 4 (June 2009), pp. 537-561, <https://www.jstor.org/stable/40586772>.

Statistical Analysis of Brookside Traffic Stops

We noted earlier that, in the 2018 through 2021 timeframe, the Brookside Police Department made roughly 7,187 traffic stops. Here is the group-by-group breakdown:

<u>White</u>	<u>Black</u>	<u>Hispanic</u>	<u>Other</u>
3,793	2,879	463	52

Traffic stops were made (a) along the I-22 corridor, over which the town contends it properly exercises police jurisdiction; (b) at Exit 91 (Cherry Ave and Roberta Drive), and (c) at several “hot spots” and other locations throughout Brookside.

On a racial/ethnic percentage basis, here is the breakdown of traffic stops resulting in citations:

<u>White</u>	<u>Black</u>	<u>Hispanic</u>	<u>Other</u>
52.8%	40.05%	6.4%	.75%

To evaluate whether any demographic group was stopped on a disproportionate basis, researchers commonly compare the racial breakdown of traffic stops to the demographics of the local jurisdiction. Our disparity analysis began with a similar comparison.¹⁰ We considered whether there are significant disparities in the rates at which white drivers and drivers of other racial and ethnic groups were stopped. Because of the large number of citations issued on I-22¹¹

¹⁰ See *Title VI Legal Manual* (Updated), Section VII. VII: Proving Discrimination – Disparate Impact, Department of Justice, Civil Rights Division. “When beginning a disparity analysis, an investigating agency should take two initial steps. First, the agency should identify the protected class. Second, the agency must evaluate whether statistical evidence is available and necessary to evaluate the claim. Next, the agency takes the third and fourth steps, which are the most critical components of the disparity analysis. In the third step, the agency should evaluate on what population the adverse disparate impact must be shown. This highly fact-specific inquiry involves accurately identifying the adversely affected population as well as determining the legally relevant population base from which to draw a comparison population. Finally, the agency must determine whether the disparity shown is sufficiently large to impose legal liability (sometimes termed ‘practical significance’); <https://www.justice.gov/crt/fcs/T6Manual7>.”

¹¹ We estimate that approximately 352 traffic stops occurred were issued at I-22 at or near Mile Marker 91.

and the significant amount of out-of-town and other travelers from outside Brookside, we enlarged the relevant population base from which to conduct demographic comparisons. Accordingly, we next considered the 2020 census reports and demographic breakdown for all of Jefferson County:

<u>Group</u>	<u>Population</u>	<u>Percentage</u>
White	326,618	49.6%
Black	281,862	42.8%
Hispanic	25,757	3.9%
Other	<u>24,378</u>	<u>3.7%</u>
	658,615	100%

Whites, then, make up 49.6% of our Jefferson County-oriented demographic base, blacks 42.8%, Hispanics 3.9%, and other groups (Asian American, Native American, Pacific Islanders, and others) make up 3.7%. We now compare these racial and ethnic percentages to the traffic stops by the Brookside Police.¹²

¹² We reiterate, statistical evidence is not the same as direct evidence of intentional discrimination. Yet statistical evidence can be useful where direct evidence is missing. According to the U.S. Department of Justice Civil Rights Division's Title VI Legal Manual, "[s]tatistical evidence can often be critical in a case where the exercise of race-based motive is alleged. A plaintiff or agency investigation can use statistics in several ways to establish a claim of intentional discrimination. For example, statistics can be used to show that an ostensibly race-neutral action actually causes a pattern of discrimination, a racially disproportionate impact, or foreseeably discriminatory results. While statistical evidence is not required to demonstrate intentional discrimination, plaintiffs often successfully use statistics to support, along with other types of evidence, a claim of intentional discrimination." U.S. Department of Justice, Civil Rights Division Title VI Legal Manual. Nonetheless, some commentators suggest that it is difficult to determine whether race plays a role in traffic stops by using statistical studies. They argue that valid conclusions cannot truly be made without studying the motivations and behavior of individual officers. See Matthew Kauffman, "Blacks, Hispanics More Likely To Be Ticketed After Traffic Stops," Hartford Courant (May 10, 2015); <https://www.courant.com/news/connecticut/hc-racial-profiling-ticket-no-ticket-p-20150510-story.html>

**Comparison of Jefferson County Racial Group Percentages
to Brookside Traffic Stop Percentages**

<u>Group</u>	<u>Population No. of Stops</u>	<u>Traffic Stop Percentage</u>	<u>Over/Under Percentage</u>	<u>Over/Under Representation</u>
White	3793	49.6%	52.8%	+3.2%
Black	2879	42.8%	40.05%	-2.75%
Hispanic	463	3.9%	6.4%	+2.5%
Other	<u>52</u>	<u>3.7%</u>	<u>.75%</u>	-2.95%
	7187	100%	100%	

To determine whether a statistical disparity has a “practical significance” as required by the Department of Justice (*see* footnote 10, above), we defined “disparity” or red flag as a 10% or greater deviation from the mean (as measured by the group’s population percentage). We also determined that disparities which are smaller in size should not be treated as red flags unless other important circumstances are present. We are now in a position to make an initial evaluation of whether, statistically speaking, there is evidence of racial profiling.

As shown above, whites were stopped 3,793 times, amounting to 52.8% of all stops. Because whites represent 49.6% of the Jefferson County population, whites received 3.2 % more tickets than their share of the population. These percentages are not strong evidence of racial profiling.

Blacks were stopped 2,879 times, or 40.05% of the total number of stops. Blacks make up 42.8% of the population and, consequently, were underrepresented by 2.75%. In other words, Blacks received a smaller share of tickets than their share of the population—2.75% fewer. Again, this is not strong evidence of racial profiling from a statistical point of view.

Hispanics were stopped 463 times, or 6.4% of all stops. Hispanics comprise 3.9% of the local population and thus were overrepresented by 2.5%. Other demographic groups were stopped 52 times. Since other ethnic and racial groups comprise 3.7% of the population and make up only .75% of the stops -- less than 1% -- they were underrepresented in the universe of citations by 2.95%. None of these statistics is strong evidence of profiling of drivers of Hispanic or other ethnicities.

In the chart on the following page, we compared percentages of traffic citations by racial group to determine if they yielded any additional insights or red flags concerning possible racial profiling.

Comparisons of Key Citations by Racial Group Chart
(Statistical Red Flags Highlighted in Red)

Citation	White No./Pct. (Pop. 52.8%)	Black No./Pct. (Pop. 40.05%)	Hispanic No./Pct. (Pop. 6.4%)	Other No./Pct. (Pop. .75%)	Total
Concealed Weapon	19/19%	79/78%	3/3%	0/0%	101
Expired Tag	274/62.7%	125/34%	11/3%	1/.30%	367
Fail to Register Veh.	175/55%	123/39%	17/5.4%	2/.60%	317
Fail to Signal	16/28.1%	38/66.7%	2/.3.5%	1/1.7%	57
Improper Lights	149/69.7%	42/19.6%	20/9.3%	3/1.4%	214
Improper Tag Lights	74/42.3%	88/50.3%	10/5.7%	3/1.7%	175
Insurance	451/45%	474/47.3%	65/6.5%	12/1.5%	1002
Left Lane	72/49%	52/35.4%	22/15%	1/.6%	147
Move Over	52/50.99%	40/39.21%	6/5.9%	4/3.9%	102
No Driver's License	49/4.3%	777/69%	293/26%	8/.7%	1127
Paraphernalia	230/28.3%	557/68.6%	13/1.6%	12/1.5%	812
Safety Belt	73/53.3%	59/43%	4/2.9%	1/.8%	137
Speeding	488/49.5%	486/49.4%	4/.4%	7/.7%	985
Stop Sign	45/16%	209/74.04%	25/8.9%	3/1.06%	282
Switched Tag	60/48.4%	62/50%	1/.8%	1/.8%	124

As shown above, some citations were issued to African Americans in a significantly greater amount than their percentage of the population, and other citations were issued to whites in higher-than-expected proportions. Blacks were disproportionately cited for possession of concealed weapons, failure to signal, improper tag lights, no driver's license, possession of drug paraphernalia, speeding, stop sign violations, and for switched tags. Whites were cited disproportionately for expired tags and improper lights. No clear explanations emerged for these disparities. Although the results are mixed, both significant and marginal disparities shown above are possible red flags of racial profiling that deserve closer scrutiny.

In summary, our statistical analysis of Brookside's traffic citations did not find strong evidence of racial profiling. Taken as a whole, disparities in the rate at which drivers were stopped do not appear to be significantly different from the rate at which drivers' racial and ethnic groups populate Jefferson County. Our review of specific types of violations further reveals that in some cases, blacks were cited disproportionately, and in other cases whites received a disproportionate number of tickets. Nonetheless, we found significant evidence of selective enforcement in certain instances, as we discuss below.

III. Warnings, rather than Citations, Were Issued to Whites at a Substantially More Favorable Rate than Other Groups

Racial profiling studies often note that a police officer's discriminatory behavior may sometimes be revealed in the officer's exercise of discretion. In other words, an officer may choose to write a citation to a driver of one race for a certain traffic violation and yet choose not to issue a citation to a driver of another race for the same violation. While there may be many factors to explain the difference in the two situations, the existence of a significant disparity in ticketing practices for drivers of different races may be evidence of racially selective enforcement. For this reason, it is important to consider the evidence with respect to a police officer's exercise of discretion in the issuance of warning tickets.

We were provided information showing the number of warning tickets issued by the Brookside Police Department from January 1, 2018, through May 10, 2020. During that time frame, the town issued over 1,000 written warnings, each warning reflecting a choice by an officer based on the circumstances surrounding the stop. The written warnings provide racial demographic data, among other things, and reflect the exercise of discretion by Brookside police. Here are the findings:

<u>Group</u>	<u>Warnings</u>
White	621
Black	359
Hispanic	27
Other	<u>13</u>
	1020

One can see that whites received substantially more warnings than other groups. To further examine the racial disparity in warnings, we also compared the warnings for each racial group to each group's percentage of the Jefferson County population. Here is what we found:

<u>Group</u>	<u>Warnings</u>	<u>Population Percentage</u>	<u>Warnings Percentage</u>	<u>Over/Under Representation</u>
White	621	49.6%	60.89%	+11.29%
Black	359	42.8%	35.19%	-7.61%
Hispanic	27	3.9%	2.65%	-1.25%
Other	<u>13</u>	<u>3.7%</u>	<u>1.27%</u>	-2.43%
	1020	100%	100%	

The above analysis suggests that whites received substantially more favorable treatment with respect to warnings than other groups. While the population gap between blacks and whites in Jefferson County is approximately 7%, the disparity in warnings is almost 26% in favor of whites. Whites received warnings to a degree more than 11% greater than their proportion of the population; blacks received 7.61% less than their population percentage; Hispanics 1.25% less; and other groups 2.43% less. These percentages are strong evidence of selective enforcement, as they reflect officer discretion being exercised to excuse whites and to enforce violations against other groups to a degree well beyond their proportion of the population. While the statistical evidence does not necessarily demonstrate intentional discrimination, it is a red flag that the evenhandedness and objectivity of the Police Department's warning practices require attention.¹³

¹³ See Mike Beaudet, WCVB Report, "White drivers got more breaks for hands-free cellphone violations, early data shows," (Feb 4, 2021). This television news report found that in the case of a new Massachusetts hands-free cellphone law, the data collected showed that whites were more likely to be given warnings than people of color. Dr. Carsten Andresen, a professor of criminal justice at St. Edward's University in Austin, Texas, reviewed the data. "White people, white drivers, they had the best outcomes. About 70% of them received a warning," he said. Non-white drivers, on the other hand, were more likely to be given a ticket with a monetary fine, he found. White drivers got a

We note that police officers often lack clear guidelines to assist them in the exercise of discretion. They must decide on their own which drivers receive warnings and which drivers receive citations. Brookside police officers were confronted with this dilemma. The absence of structure and standards concerning warnings created a decision-making void and invited officers to rely on subjective impulses and ‘gut reactions’ in place of professional and organizational standards. This slippery slope may have led to selective enforcement negatively affecting African American drivers. Brookside leadership can protect citizens’ constitutional rights by providing patrol officers with standards to guide their discretion and to enable more consistent policing.¹⁴

citation 30% of the time, while Latino and Black drivers each got citations 40% of the time. Asian drivers were cited 44% of the time. <https://www.wcvb.com/article/massachusetts-data-white-drivers-got-more-breaks-for-hands-free-cellphone-violations/35421474#>

¹⁴ The *Police Function Standards* adopted by the American Bar Association identify general principles for police functions, police objectives and priorities, and the role of local governments, courts, and legislatures in controlling police organizations. The standards identify the need for structure and control for the exercise of officer discretion:

PART IV. LAW ENFORCEMENT POLICY MAKING

Standard 1-4.1. Exercise of discretion by police

The nature of the responsibilities currently placed upon the police requires that the police exercise a great deal of discretion -- a situation that has long existed but is not always recognized.

Standard 1-4.2. Need for structure and control

Since individual police officers may make important decisions affecting police operations without direction, with limited accountability, and without any uniformity within a department, police discretion should be structured and controlled.

See *ABA CJS Police Function Standards* (July 2020); copyright by the American Bar Association.
https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_urbanpolice/

IV. Did Brookside Police Target Older Vehicles?

At the outset of our investigation, we considered the possibility that police were selectively targeting older vehicles as a means of identifying persons who were relatively less able to challenge unwarranted citations. This is the conventional wisdom regarding persons who drive older vehicles. We found a 2008 study which supported the conventional view and concluded that older vehicles, in fact, are targeted by police. According to the study, “[v]ehicle age is especially important for analysis of pretext since it is likely to be correlated with equipment deficiencies and may also be related to driver socio-economic status. Driver [socioeconomic status] may also be related to an increased likelihood of inadequate registration, licensing, and insurance coverage.”¹⁵

Stated in less lofty terms, older vehicles are assumed to be driven by persons of lesser economic means. These older vehicles are magnets for police traffic stops and usually involve minor violations which enable police to scrutinize the driver. If no serious violation is found, the driver may escape with a mere warning to correct the deficiency. Such “warning stops” allow police to conduct, in effect, a full field investigation of the driver. Thus, law enforcement interest in the minor violation is not the main concern; the announced, purported concern is “pretextual” or feigned when, in fact, the officer is in search of more serious violations. The study concludes that “drivers of older vehicles are at an elevated risk of experiencing a warning traffic stop, with each year increasing the likelihood of such a stop about five percent.”¹⁶

¹⁵ Kirk Miller, PhD, “Police Stops, Pretext, and Racial Profiling: Explaining Warning and Ticket Stops Using Citizen Self-Reports,” *Journal of Ethnicity in Criminal Justice*, 6:2, 123-149, 134-35, 139, 142 (2008); <https://doi.org/10.1080/15377930802096496>.

¹⁶ *Id.* at p. 139.

In the final analysis, we did not pursue the “older vehicle” theory. The basic task was to determine the age of each vehicle at the time of the citation and then assess whether older vehicles were stopped at higher rates than newer vehicles. Our initial analysis produced a range of model years from the 1990s to the present day. We then considered the practicalities of completing any analysis of this kind. The sheer complexity of calculating the ages of thousands of vehicles without the aid of analytical tools needed to manage Big Data -- at the various times citations were issued -- is a significant challenge in and of itself.

Additionally, a corollary to the conventional wisdom is that persons driving older vehicles are less able to challenge citations and defend themselves. While that may have been true in 2008, that assumption is no longer valid. Any meaningful, large-scale analysis of vehicular-age data would be complicated by the fact that Americans are now holding vehicles for longer periods of time.¹⁷ Among other reasons, cars are made better and last longer. Hence, the age of a vehicle can no longer be considered a reliable indicator of a driver’s socioeconomic status.

From a practical standpoint, we also considered the fact that, during nighttime or interstate patrols, it is difficult for police officers to determine vehicle ages. Brookside police did not have access to technology which identified the ages of vehicles traveling in darkness or moving at interstate speeds.

¹⁷See Samantha Fields, “Americans are driving older cars, a trend the pandemic accelerated,” Marketplace Morning Report (Jun 15, 2021); <https://www.marketplace.org/2021/06/15/americans-are-driving-older-cars-a-trend-the-pandemic-accelerated/>; Report: Sean Tucker, “We’re All Driving Older Cars,” *Kelley Blue Book* (June 14, 2021); <https://www.kbb.com/car-news/report-were-all-driving-older-cars>; Report: “Old Clunkers Rule the Roads: Americans Are Driving Cars Longer” CNBC News (June 9, 2014); <https://www.nbcnews.com/business/autos/old-clunkers-rule-roads-americans-are-driving-cars-longer-n126226>.

In these circumstances, we decided that we could not draw any strong conclusions from the fact that a traffic stop involves an older vehicle. Because technical challenges are daunting and today's owners retain cars and trucks longer, the "older vehicle" theory did not gain traction in our analytical process.

V. Drug Trafficking in Brookside Was Likely a Significant Factor in the Town's Aggressive Traffic Enforcement Program

Drug trafficking law enforcement played an outsized role in creating the perception of Brookside as a ticketing-for-cash jurisdiction. Law enforcement and media reported in detail the scope of Alabama's drug problem, especially in rural areas. Official reports have stated for years that Interstate highways such as I-22, I-65, I-59, I-10, I-20, and I-85 were Alabama's primary connections to the regional hubs of drug and human trafficking.¹⁸ Atlanta is the center of the hub. In Central Alabama, Jefferson and Walker counties are more than "hot spots" -- they are Ground Zero.¹⁹ The Gulf Coast is a major key to the drug trade, as is North Alabama, the Wiregrass area,

¹⁸ "The State of Alabama is in a convenient location for illegal drugs that could be transported via highway, waterway, railway or airline. Interstate I-20, I-65 and I-85 which run through Alabama provides a close direct connection to Atlanta, which is still considered one of the main distribution points for illegal drugs in the Southeast. Interstate I-10 which runs across the bottom portion of Alabama provides another direct connection to illegal drugs via the State of Texas and the Mexican border.... The primary interstates in Alabama include I-10, I-20, I-59, I-65 & I-85, consisting of 904 miles of interstate highways. Alabama's Interstate Highway System, which includes two percent of all roadway lane miles in the state, carries 22 percent of all vehicle travel in the state. According to EPIC statistics, the top seizure interstate reported was I-10 with 22 stops. The interstates of I-65 showed 21 stops and I-20 showed 18 stops. Interstate I-59 had 11 stops reported with I-85 showing 5 stops." ALABAMA 2021 DRUG THREAT ASSESSMENT, Prepared by Alabama Operations Center / Gulf Coast HIDTA, pp.3,11. Interestingly, this report somehow misses the fact that I-22 exists and is an interstate highway.
<https://druguse.alabama.gov/assets/files/2021AlabamaDrugThreatAssessment.pdf>.

¹⁹ See Amy Yurkanin, "Poor, rural and addicted: Drugs drive surge in white women in prison" (Aug. 24, 2017) quoted here extensively to convey the gravity of the drug problem in Alabama and its impact on rural women.

Walker County is 90 percent white, and the faces in the benches reflected one of the fastest-growing inmate populations in the state - rural, drug-abusing women. Between 2002 and 2013, the number of white women in Alabama prisons doubled. An analysis of a recent prison roster revealed that nine out of 10 of the counties most likely to send women to prison have less than 100,000 residents, and most of them are white. For a couple years, Graves has made this weekly pilgrimage to take a drug test and pay court fees. It's part of an agreement that kept her out of prison on charges of drug possession and third-degree burglary.

The women's prison population increased by 66 percent between 2002 and 2013, driven almost entirely by a surge in the number of white women behind bars. About 50 percent of women in prison have been convicted of non-violent offenses, according to data provided by the Alabama Sentencing Commission, compared to 25 percent for the entire prison population, which is more than 90 percent male. The reasons for the influx of white women into prison aren't entirely clear. Marc Mauer, executive director of the Sentencing Project, has documented dramatic changes in the racial makeup of female prisoners across the country. He said tough sentencing for drug crimes accounts for much of the growth in the number of incarcerated women, driven by the decline of crack - which was more prevalent in inner cities - and the rise of meth and opioids in rural areas.

Many of the same things that are killing rural American women - including mental illness and substance abuse - are also sending them to prison, Mauer said. The loss of factory and agriculture jobs have jolted

Alabama communities once anchored by coal mines, lumber mills and textile plants. Jobless residents increasingly turn to drugs and crime. Rural communities are now struggling with the same problems that used to be linked to inner cities, Mauer said.

Walker County sits on top of the state's largest coal seam, in an area drained by the Black Warrior River. Flinty and a little wild - for decades the area attracted toughminded folk who carved communities around mines and timberlands. Criminals came too, contract killers and counterfeiters who shackled up on the fringes and created a well of local lore as deep as any mineshaft.

Recent economic problems have pushed the edges toward the center, as blue-collar neighborhoods began fraying toward poverty and lawlessness. Residents watched helplessly as the county's outlaw reputation became its reality. Mines in Walker County laid off hundreds of workers from 2013 to 2015 - eliminating scores of middle-class jobs from an area with few alternatives. Abandoned by coal and unable to leave, some found comfort in pills and needles. Late last year, 22 people overdosed on heroin in a span of three days, a stunning number for such a small place.

Walker County has become, by some accounts, ground zero for the state's opioid epidemic. Demand for pain pills soared even before the mine layoffs, from patients crippled from backbreaking work to those looking for another kind of lift. Some of the busiest doctors flocked to the area, offering walk-in appointments and pills for cash - without much regard for how they were used or abused. Between 2012 and 2014, Walker County had the highest rate of drug overdose deaths in the state.

Still, in less than 20 years, the prison population in Alabama shifted from majority African-American to more than 70 percent white - a change driven by a sharp uptick in overall incarceration. An analysis of a female inmate roster found that rural counties with less than 100,000 residents accounted for 9 out of 10 of the counties with the highest rates of incarceration. "In the 1980s, it was crack, crack, crack all the time," Kenney said. "When we look at the drug trends, it moved away from cocaine and toward meth."

Around 1995, law enforcement agencies began raising concerns about the spread of meth and the toxic home-based labs used to produce it. Drug rings sprang up in rural Alabama, including several in Sand Mountain, nicknamed Meth Mountain for the speed consumed in the region. Then-Alabama Attorney General Troy King also described the Wiregrass region in the southeastern part of the state as a "battleground" in the war on meth, which had "consumed" rural areas. Soon similar alarms had gone up all over the state.

Lawmakers in Alabama considered requiring prescriptions for pseudoephedrine - a cold remedy and critical ingredient in methamphetamine. When that proposal failed, they put the drugs behind the counter and created a registry. Lawmakers also passed laws that increased criminal penalties for meth users and cooks, in some cases turning misdemeanors such as possession into felonies carrying prison time.

Sheriffs and district attorneys said the laws led to a sharp decline in the number of meth labs, even as they increased drug arrests in rural Alabama. Kenney noted that the decline of meth coincided with the rise of opioids - drugs that are both more addictive and deadlier than speed. Geographic and racial differences in prescribing put many of the pills in the hands of the people most likely to develop addiction.

"Women are much more likely to abuse pain pills and white women are much more likely to be prescribed pain pills," Kenney said.

Painkillers and heroin have displaced methamphetamine as the biggest drug threat in many rural and suburban counties. Last year, lawmakers voted to increase penalties for possession of heroin and fentanyl, a powerful synthetic opioid.

https://www.al.com/news/2017/08/poor_rural_and_addicted_drugs.html

Sand Mountain, and throughout this mostly rural state. Seemingly placid communities are, in fact, teeming with illegal drug manufacturing, distribution, and personal use. Over the years, drug traffickers have learned to avoid areas with a heavy law enforcement presence and, instead, operate and travel in rural areas where law enforcement organizations lack resources.²⁰ Traffickers also operate in urban areas and wherever law enforcement presence is thin.

²⁰ See Kelley Smith, “Rural Northeast Alabama: A quiet haven for tourists and the drug traffickers who ride the back roads,” (Feb 20, 2020)

HUNTSVILLE, Ala. – “North Alabama has some of the most scenic and rural country roads in the U.S. The area draws tourists, weekenders and drug traffickers. Law enforcement agencies around North Alabama know quiet doesn’t necessarily mean peaceful. “We’re right in between Chattanooga and Huntsville, both fairly large areas and when you have fairly large areas you have a lot of drug dealers in those areas,” Jackson County Chief Deputy Rocky Harnen said. It’s not just Jackson County. DeKalb County Sheriff Nick Welden says it’s a problem his deputies are fighting. “We’re just a hub of routes from Tennessee to Georgia, to all the way through Alabama. And so we’re seeing a lot of drugs from Mexico and other places that are coming through here,” Welden said. Huntsville’s Strategic Anti-Drug Team (STAC) knows that traffickers are headed their way. A Huntsville STAC team member told WHNT News 19 they’ve seen a major increase in the amount of heroin and fentanyl coming to North Alabama. “Two years ago that drug was minimal, the STAC team seized about 1.9 pounds of heroin and fentanyl that year. One year later, seized almost 6 pounds of heroin and fentanyl, so that drug train has definitely gone up,” Tony McElyea said. McElyea says Atlanta is a major source city for drugs coming to the Tennessee Valley. This means law enforcement agencies like Jackson and DeKalb counties are on the front lines combating drug trafficking. The Jackson County Chief Deputy tells WHNT News 19 traffickers generally choose two-lane back roads that wind through quiet communities. “They’re backroad routes, not main roads but drug dealers and drug transporters want to use those routes to stay away from law enforcement,” Harnen said. Sheriff Welden says those back roads are links to bigger areas and cities. “DeKalb is a very big county with a whole lot of major highways in it and you can go from here to Atlanta to Nashville to Chattanooga, Birmingham, northern states and come right through us to get to Florida, vice versa,” Welden said. In 2019, the DeKalb County Sheriff’s office reported it made 30 drug trafficking arrests, Jackson County arrested 13 people on trafficking charges, and Huntsville STAC agents busted 62 drug traffickers, according to figures provided to WHNT News 19. “In this job you have to stay one step ahead of the bad guys because they are constantly trying to figure out how to outsmart you by getting their product through your county or your city,” Welden said. Welden said when he took office in 2019, he decided to take a new approach to fight drug trafficking. His deputies are receiving more training, stopping more vehicles and conducting more driver’s license checkpoints. “In a year’s time, they increased the amount of drugs taken off the street by 500%. So I would say the training is working and the proactive law enforcement is definitely working here in DeKalb county,” Welden said. And according to those on the front lines, the stakes couldn’t be higher. “I would venture to say the overwhelming majority of criminal activity, especially violent criminal activity is somehow a derivative of a drug crime,” McElyea said. The most recent FBI figures show 1.6 million people in the U.S. were arrested for drugs in 2018. Eighty-six percent of those arrests were for possession, a number that continues to grow. Less than 14 percent were arrested for selling or manufacturing drugs. “Drugs are the root of all crime. It ties into human smuggling, human trafficking and organizational. It’s just tied all over or funded by drug money and drug trafficking,” Welden said.

Drug trafficking enterprises are often organized like hierarchical pyramids -- tiered with “kingpins” at the top and individual operatives at street level. Organized criminal groups are perceived to sometimes form along racial and ethnic lines and specialize in specific roles in the drug supply chain. One group is perceived to occupy and dominate manufacturing or growing, another is perceived to function in distribution channels, and others are perceived to act as street level operatives selling to recreational users and addicts. Market share is perceived to be divided along these same racial and ethnic lines and among competing criminal organizations. These competitors fight violently over market share.

Law enforcement strategy often involves attempting to disrupt distribution and consumption at the bottom of the pyramid: the level of individual sales and use. The challenge for police departments is to effectively fight drug trafficking in the streets while also maintaining high professional standards. A significant part of the challenge is the shortage of funding to support drug trafficking enforcement. Underfunded local governments face the temptation to fund law enforcement activities through traffic citations. As meth and other narcotics cause people to become addicted to drugs, the need for revenue may cause town budgets to become addicted to fines. This is where a collision occurs with ordinary citizens.

Brookside, like many small towns in Alabama, has experienced rampant drug use over the years. Confiscated drug paraphernalia includes “baggies” to package and sell marijuana, hypodermic needles to inject heroin, syringes with various narcotics, glass pipes containing methamphetamine, and cut straws and plastic straws presumably to snort powdered drugs. Descriptions of traffic stops detail encounters involving semi-conscious suspects with syringes stuck in their arms and even in body cavities.

During the course of our investigation, we met with new town officials Mayor Mike Bryan,²¹ Police Chief Henry Irby, and Town Attorney Mark Parnell. They explained that before Mike Jones was hired as Police Chief, the town had been plagued with an old problem: crystal meth and other drugs. Town leaders were focused on the need to target Brookside's crack houses and drug "hot spots." Lay people, like council members, did not know how to build a police department. Jones was hired and trusted to fix this problem and to build up Brookside's Police Department. Jones, in the town's view, was successful in cleaning up the streets, as crime came down and patrol miles went up.

Upon Mike Jones' arrival, Brookside directed its efforts and resources on combatting drugs. In October 2018, Jones commenced a new crime fighting initiative. According to a WBRC news report, Jones deployed narcotics interdiction officers to several drug hotspots in Brookside to "send a message to [the] criminal element."²² Town officials told us that "he got results." WBRC observed that Jones' "no nonsense," "go after the bad guys approach" was successful in shutting down several drug operations. That initiative produced over 378 misdemeanor arrests and 52 felony arrests -- a total of 430 arrests -- in a town of only 1300 residents. This was a number equal to one arrest for every four Brookside residents.

The national press began reporting on drug activity in Brookside in March 2016. The first national story focused on the humor of a drug suspect whose loud snoring revealed his whereabouts

²¹ In 2021 Mayor Roger McCondichie became ill and Mike Bryan became mayor *pro tem*. Bryan became the permanent mayor after Mayor McCondichie passed away.

²² See WBRC report: "Brookside police fighting crime and getting results--Brookside police are seeing results with their crime fighting techniques," (Aug. 6, 2019); <https://www.wbrc.com/2019/08/06/brookside-police-fighting-crime-getting-results/>

when he fell asleep in a clothes dryer. The suspect hid in the dryer to avoid arrest during Operation Crackdown, a weeks-long effort to rein in drug possession and trafficking.²³

Since that time, news stories have concerned not humorous but rather high-profile, serious drug enforcement events. One category of success concerned traffic enforcement efforts within the traditional town boundaries. On January 11, 2021, the local news reported that Brookside police narcotics agents seized over two pounds of fentanyl during a traffic stop on Cherry Avenue near Bivens-Brookside Road. The K-9 unit detected narcotics in the stopped car. The search yielded 2.48 pounds of fentanyl, 3.9 grams of meth, suboxone, pills, syringes, digital scales, “baggies” used to package and sell narcotics, and various drug paraphernalia. According to former U.S. Attorney Jay Town, the amount of fentanyl seized was sufficient to kill “nearly every resident of Jefferson County.” The street value of the fentanyl was estimated at more than \$60,000. The driver was charged with multiple felonies, including drug trafficking of meth and fentanyl, DUI, and illegal possession of controlled substances, drug paraphernalia, and prescription medication. The officers involved were said to have saved thousands of lives by capturing the shipment.²⁴

Police also had highly publicized stops outside of the town’s traditional boundaries -- in controversial patrols near and along I-22. According to town officials, I-22 is itself a “hot spot.” While Atlanta is the hub connecting various spokes of the drug trafficking network in this region,

²³ Operation Crackdown resulted in at least 26 arrests. Unfortunately, it also resulted in an emergency room visit by an officer who was injured when pursuing a suspect. The officer slipped and fell in the chase but escaped being killed when the suspect failed in an attempt to shoot him after he had fallen. *See* Carol Robinson, “Snoring Alabama drug suspect found asleep in clothes dryer,” *al.com* (March 31, 2016); https://www.al.com/news/birmingham/2016/03/snoring_alabama_drug_suspect_f.html.

²⁴*See* “\$60K worth of fentanyl seized during traffic stop, thousands of lives saved” by CBS 42 digital team (January 11, 2021); <https://www.cbs42.com/news/crime/60k-worth-of-fentanyl-seized-during-jeffco-traffic-stop-thousands-of-lives-saved>.

the town understands that I-22 is the Number One drug and human trafficking pipeline connecting Memphis and Birmingham. The Gulf Coast is another focal point of drug trafficking activity. Each of the interstates in Alabama are arteries in the network: I-10, I-20, I-22, I-59, I-65, and I-85. Consequently, news stories frequently report on local drug arrests on the interstate highways.²⁵ As early as 2019, WVTM13 reported on Brookside's efforts to interdict drugs on I-22.²⁶

In other news stories, a Utah news organization reported on a drug bust that took place on I-22 on September 13, 2020. Brookside police officers stopped a car traveling from Mobile to Utah at 11:15 PM. The driver allegedly provided false identification but was later positively identified

²⁵ See, e.g., Linda Grantin, WVTM13 Report, "\$43,000 cash seized during traffic stop," (May 2, 2020); <https://www.wvtm13.com/article/dollar43000-cash-seized-during-traffic-stop/32351866>

²⁶ See Sarah Killian, WVTM13 Report, *Brookside Police crackdown on crime on I-22: Brookside Police successfully tackling drug activity in community* (Aug 23, 2019); <https://www.wvtm13.com/article/brookside-police-crackdown-on-crime-on-i-22/28798564>. A transcript of the video report shows the following:

EUNICE: NEW THIS MORNING, A MAJOR CRACKDOWN ON CRIME FOR ONE SMALL TOWN IN JEFFERSON COUNTY. BROOKSIDE POLICE ARE STEPPING UP PATROLS ALONG INTERSTATE 22 IN HOPES OF KEEPING CRIMINALS OUT OF THEIR TOWN. WVTM 13'S SARAH KILLIAN IS LIVE ALONG I-22 NEAR BROOKSIDE THIS MORNING. GOOD MORNING. WHY ARE POLICE THERE TARGETING THE INTERSTATE?

SARAH: POLICE SAY I-22 IS A HOTSPOT FOR CRIMINAL ACTIVITY AND THIS IS A VERY BUSY THOROUGHFARE FROM ATLANTA TO MEMPHIS WHERE A LOT OF DRUGS RUN TO THIS INTERSTATE AND BROOKSIDE POLICE SAY IT IS HAVING A DIRECT IMPACT ON THEIR SMALL-TOWN. THE POLICE CHIEF SAYS LAST YEAR HE NOTICED HIS SMALL DEPARTMENT WAS BECOMING OVERWHELMED BY DRUG-RELATED CALLS. THEY DECIDED TO COME UP WITH A PLAN TO CUT DOWN ON THE PROBLEM AND ADDED MORE POLICE OFFICERS WHO ARE SPECIFICALLY TRAINED IN DRUG INTERDICTION AND TARGETED SPECIFIC AREAS, ESPECIALLY I-22 AND THEY ARE HAVING TREMENDOUS SUCCESS.

LT. JAMES SAVELLE: OUR NUMBER ONE GOAL IS TO NOT PROSECUTE PEOPLE THAT IT IS TO SAVE LIVES. THAT'S WHY WE GOT INTO THIS. WE WANT TO SAVE LIVES. WE WANT TO KEEP OUR CITIZENS SAFE. WE WANT TO KEEP PEOPLE WHO ARE COMING TO BROOKSIDE SAFE AND ENJOY OUR TOWN.

SARAH: JUST TO PUT A NUMBER TO THE STATEMENT ABOUT THEIR SUCCESS, 2018 THEY AVERAGED 8-10 OVERDOSE CALLS A MONTH. IN 2019 ALONE, THEY'VE ONLY HAD SIX OVERDOSE CALLS.

as a convicted sex offender with a lengthy criminal history. The driver and passenger were charged with transporting narcotics having an estimated street value of more than \$30,000. Travel bags and suitcases were recovered containing 204.7 grams of crystal meth, 95.2 grams of pure black tar heroin, 2.7 grams of fentanyl, marijuana, loaded syringes, a bottle of liquid heroin, and various drug paraphernalia “baggies.” Officers also recovered a loaded gun, cash, stolen credit cards and burglary tools along with night vision goggles, binoculars, and cameras.²⁷

A WIAT story reported on the October 1, 2020, arrest of a Memphis rapper traveling from Atlanta to Memphis. Brookside narcotics interdiction officers stopped the vehicle in which he was a passenger on I-22 near Cherry Avenue. The police determined the two occupants were headed back to Memphis from Atlanta and seized more than \$17,000 in cash, a loaded Glock 40 handgun, the controlled substances Promethazine and Codeine, and marijuana individually packaged for sale. The rapper allegedly is a known Memphis gang member with pending state and federal charges.²⁸ Federal law enforcement agencies and the U.S. Attorney’s Office assisted Brookside with the case.

In June 2021, WVTM reported that a Brookside police officer and two suspects were hospitalized after an “intense stop on I-22.” While attempting to stop the vehicle, officers determined that the driver had active warrants and believed he was driving under the influence of a controlled substance. The driver and a passenger resisted arrest and a fight ensued between the two occupants and the officers. One of the officers suffered a broken leg in the melee and was

²⁷ See Erik Harris, “Brookside police arrest two on drug trafficking charges,” *Trussville Tribune* (September 15, 2020); <https://www.trussvilletribune.com/2020/09/15/brookside-police-arrest-2-on-drug-trafficking-charges>.

²⁸ See Shay Arthur, “Memphis rapper ‘Big 30’ arrested in Alabama on felony drug charges,” WIAT, CBS42, Nextstar media wire (October 1, 2020); <https://www.cbs42.com/news/crime/memphis-rapper-big-30-arrested-in-brookside-on-felony-drug-charges>.

transported to the hospital. The suspect driver was hospitalized for a drug overdose after ingesting drugs during the arrest. Law enforcement recovered a 9-millimeter handgun along with meth, counterfeit money, and drug paraphernalia.²⁹

According to press reports, suspects operating at the higher manufacturing and distribution levels sometimes operated in Brookside. A WIAT/Nexstar Media news post on October 7, 2020, reported the arrests of six persons for drug trafficking and manufacturing, as well as possession of stolen vehicles and property. Patrol officers located a truck stolen from Cullman at a residence near Brookside-Coalburg Road. Officers also found a marijuana farm. While four suspects were immediately taken into custody, two fled the scene -- one armed with an illegal sawed off shotgun. A K-9 unit, narcotics agents and tactical units responded and eventually located both suspects between 1:00 a.m. and 4:30 a.m. Later that morning, evidence technicians recovered more than \$11,000 in counterfeit bills, commercial printing machines, stolen AR-15 rifles, handguns, and other weapons. They also seized a stolen motorcycle, bus, RV trailer, four-wheelers and other stolen property. The six were charged with the unlawful manufacturing of controlled substances, drug trafficking of marijuana, possession of forged instruments, and possession of drug paraphernalia.³⁰

Indeed, as October 2021 through August 2022 arrest figures indicate, Brookside's drug problems clearly have not ended. From January 1, 2018, through July 31, 2022, Brookside's drug

²⁹ See "Brookside police officer, two suspects hospitalized after traffic stop on I-22," WVTM13 Digital (June 11, 2021); <https://www.wvtm13.com/article/brookside-police-officer-two-suspects-hospitalized-after-traffic-stop-on-i-22/36703918#>.

³⁰ See Jordan Highsmith, "6 arrested in drug trafficking, manufacturing arrest in Brookside," CBS42 WIAT (Nexstar Media, Inc.)(October 7, 2020); <https://www.cbs42.com/news/local/6-arrested-in-drug-trafficking-manufacturing-arrest-in-brookside>.

enforcement efforts resulted in 1,732 misdemeanor charges for illegal possession of prescription drugs, possession of drug paraphernalia, possession of marijuana, and other drug-related crimes. From January 2019 through December 2021, the police department made 942 drug-related arrests, an average of 314 arrests per year or 3.5 arrests for every person in the town. Some of the arrests involved prostitution within the town's traditional boundaries, and press stories vividly illustrate how drug trafficking and human trafficking intersect.

In January 2020, news organizations ABC 33/40 and WBMA reported that the execution of a search warrant at an abandoned house in Brookside, where electrical utilities were suspected of being stolen, resulted in the discovery of a woman apparently kept as a “sex slave” for over a year. A suspect apparently was squatting in the abandoned home and had illegally wired the home for electricity. Inside the home police found a large amount of syringes, drug paraphernalia, and stolen credit cards. The woman was drugged and forced to have sex with numerous men in exchange for drugs, money and stolen goods over the course of a year.³¹ In February 2020, a WVTM13 news story followed up on the earlier reports and provided more details on the woman's circumstances.³² Local advocates and commentators also describe how drugs and human trafficking on Alabama's interstates thrive in the motels of suburban Birmingham and the state's rural communities³³

³¹ See Jack Helean, “Police: woman kept as sex slave for over a year inside Brookside home,” WBMA (January 31, 2020); <https://abc3340.com/news/local/brookside-utility-theft-investigation-leads-to-discovery-of-woman-kept-as-sex-slave>; and <https://myabc15.com/news/local/brookside-utility-theft-investigation-leads-to-discovery-of-woman-kept-as-sex-slave>.

³² Chip Scarborough, WVTM13 Report: *Brookside PD concerned about safety of missing woman* (Feb 3, 2020); <https://www.wvtm13.com/article/brookside-pd-concerned-about-safety-of-missing-woman/30757667>.

³³ UAB Institute for Human Rights Blog, “The Sex Trafficking Industry Right In Alabama” Posted August 28, 2019, by Dianna Bai, Guest blogger, Human Rights of Special Groups, Human Trafficking, North America, Right to Health and Public Health, Women's Rights:

You may have heard of the tragic situation straddling the I-20 corridor, the stretch of highway that runs between Birmingham and Atlanta. Known as the “sex trafficking superhighway,” the I-20 corridor is a hotbed for human trafficking. The intimate settings of this illegal trade? Familiar places in our backyard: the hotels on Oxmoor Road, Woodlawn, Bessemer, and establishments all over the city of Birmingham. Yet sex trafficking is not just confined to the I-20 corridor, as many media reports would suggest. It’s spread throughout the state of Alabama, in large cities and rural areas alike, appearing in myriad variations. The Global Slavery Index estimates that there are over 6000 victims of human trafficking each day in Alabama, which includes labor and sex trafficking. As a \$32 billion industry, human trafficking is the second-largest criminal industry in the world after the illicit drug trade—and it’s the fastest-growing. It’s the modern-day slave trade flourishing under the radar. In the idyllic foothills of Alabama, we are touched by dark and complex operations with global reverberations. Who are the victims of sex trafficking in Alabama? Sex traffickers prey on the vulnerable, such as people who come from poverty or broken families. According to The WellHouse, a non-profit organization that shelters young women in Alabama who have been victims of sex trafficking, there is a common “model” of a victim human traffickers prey on. She is often a 12-14-year-old girl who has already been a victim of sexual abuse by a family member. An emotionally vulnerable young woman, she is lured in by the promises of comfort, love, and acceptance that an older man offers her. He will later become her captor.

One example provided by Carolyn Potter, the executive director of The WellHouse, offers us a glimpse into the world of the girls who become victims of traffickers:

There was a victim who had been abused by her stepfather—and her mother blamed her. Her captor started luring her in and buying her Hello Kitty items. She loved this. Nobody who was supposed to protect her protected her.” Sex traffickers often prey on girls who have been abused by the people who love them. The accumulated trauma and experiences of abuse that these girls have been subjected to in their young lives gives rise to a sense of apathy and hopelessness. So when their captors, who had been lavishing them with gifts and attention, start asking them to sell their bodies, their reaction is often, “Why not? This has been happening to me all my life.” To numb the pain of repeated abuse, they may turn to drugs provided by the captors and become addicted. Traffickers then have a way to keep them from leaving.

A few might escape this life by her own efforts, but more often than not they escape through rescue operations carried out by law enforcement. In January of this year, the Well House participated in a sting operation led by the FBI during the Atlanta Super Bowl that rescued 18 girls and led to 169 arrests. Sex trafficking has also risen in recent years among street gangs in Alabama with ties to Georgia, Florida, and even the West Coast, according to Teresa Collier at the Alabama Law Enforcement Agency. Street gangs such as the Bloods, Simon City Royals, Latin Kings, and Surenos are known to be engaging in sex trafficking to make a profit alongside the illegal drug trade. Recruiting mostly young victims, traffickers use “bottom girls” – prostitutes who are trusted by the pimps – to identify and recruit new girls, as well as a bevy of popular social media sites including Facebook, Twitter, Instagram, Snapchat, KIK, Meet Me, Badoo, and Seeking Arrangement. Gangs like the Surenos, which have a powerful reach back to El Salvador, can even coerce the women by threatening their families back home.

In many cases, other criminal activities such as drug dealing, money laundering, and murder also surround sex trafficking operations. What’s being done about sex trafficking in Alabama? One reason Alabama attracts traffickers of all stripes is because it is easier to get away with the crime than other states like Georgia that have a tactical task force dedicated to combating sex trafficking, according to Collier at the Alabama Law Enforcement Agency. Also playing to the trafficker’s advantage is the fact that Alabama is mostly a rural state with greater distances between police stations and fewer resources for law enforcement, said Lim, the professor of social work at the University of Alabama. He also said there needs to be more awareness raised

VI. The Town Considered a Larger Police Force to be a Necessity, not a Means to Increase Town Revenue

Brookside officials suggest that multiple factors – not the need for revenue -- contributed to the rise in traffic enforcement activity. The town contends that an increase in Brookside’s police force was necessary to provide sufficient backup and to ensure that officers would not be forced to go on patrols alone. Specifically, the growth in the police force was intended to facilitate initiatives against dangerous drug activity. At one time, the Sheriff’s Department assisted the town and provided patrol and other support. In the final analysis, the town determined that the Sheriff Department’s allocation of resources to police the town was not adequate to address the problems they faced. The town views the increase in citations, arrests, and court dockets as a necessary part of the cost of fighting crime.

Another factor behind the rise in traffic enforcement activity is the structure and requirements of the town’s federal grants. Although those grants do not explicitly establish ticket quotas, they require police departments to have hourly “citizen contacts” -- a requirement that is often viewed as a quota. Brookside is a recipient of some of these grants. Although there is apparently no written requirement defining a “citizen contact” as a traffic stop, some officers believed they were required to issue as many as three or four tickets per hour to satisfy grant requirements.³⁴

about this issue as many misconceptions exist about sex trafficking due to the popular media’s portrayal of sex trafficking in movies like “Taken.”

<https://sites.uab.edu/humanrights/2019/08/28/the-sex-trafficking-industry-right-in-alabama>.

³⁴ For more reporting on how federal grants support excessive ticketing, see Ashley Remkus and Ramsey Archibald, “Inside Alabama’s worst speed traps,” al.com (Sep. 19, 2022); <https://www.al.com/news/2022/09/inside-alabamas-worst-speed-traps.html>. Additionally, federal grant funds were likely used in Brookside to purchase a military vehicle. Because the town is located in a floodplain, the vehicle was intended for use in case of flooding in the area.

Mayor Bryan offered an additional response to the revenue-as-a-motive criticism. He noted that it was impossible to fund the town from ticket revenue alone. In his view, it costs more to operate the Police Department than the revenue it generates. From the town's perspective, it is costly to operate with a full staff of officers, vehicles, and weapons. For example, it cost over \$680,000 to fund the Police Department in a recent year when the ticket revenue was about \$600,000, resulting in an operating deficit in that year. When press reports emerged of the increase in ticket revenue and the growth in the Police Department, town officials say they chose to be proactive in assessing any potential financial misconduct.³⁵

³⁵ As a result of a request by Lt. Gov. Will Ainsworth, the Alabama Department of Examiners of Public Accounts conducted a limited examination of Brookside's police and municipal court financial records, compliance procedures, internal controls, and inventory operations. See "Report on the Town of Brookside, Jefferson County, Alabama, October 1, 2018 through February 2, 2022," Dept. of Examiners of Public Accounts (April 15, 2022); Available at <https://examiners.alabama.gov/PDFLink.aspx?IDReport=6500>; see also John Archibald, *Alabama Lt. Governor requests state audit of Brookside and its police department*, al.com (Jan. 26, 2022); available at <https://www.al.com/news/2022/01/alabama-lt-governor-requests-state-audit-of-brookside-and-its-police-department.html>

VII. Is the Brookside Police Department Over-Policing Village Circle?

Earlier we recognized that statistical analyses alone do not necessarily tell the whole story of whether racial profiling exists. Statistics can be manipulated; misconduct in individual cases may be hidden; quantitative metrics can mask unvoiced motives. Therefore, it is important to review police behavior at ground level in addition to statistical outcomes at the 30,000-foot level. To this end, we consider some of the publicly shared stories.

At the town halls, residents of Village Circle -- a housing complex formally known as Brookside Village -- reported harassment and frequent over-policing by the Brookside Police Department. A majority of the residents of Village Circle are African American. Perceived harassment has contributed to a sense that the police are engaged in a strategy of racial harassment to ‘run them out of town’. One resident reported, for example, that she has been regularly followed and harassed over a period of 17 years.

In fact, the citations database confirms that the Brookside Police Department conducts law enforcement activity on an enhanced level in the vicinity of Village Circle, seemingly on a round-the-clock basis. Many traffic stops occurred on Main Street near Village Circle, others on North Main Street near the apartment units, and other stops happened at Village Circle itself.

We note at the outset that, according to the citations, Village Circle residents are not necessarily the subjects of a majority of these law enforcement efforts. A substantial number of citations were directed to non-residents not only of Brookside but also of Jefferson County.³⁶ We

³⁶ The citations database shows that persons charged with possession of drugs or drug paraphernalia in the vicinity of Village Circle come from small rural communities in the Birmingham area, Central Alabama, North Alabama, and out-of-state. Those charged include white residents of Brookside, Birmingham, Elkmont, Leeds, Kimberly, Graysville, Hueytown, Jasper, Gardendale, Mount Olive, Adamsville, Bremen, Coaling, Navoo, Quinton, Dora, Cordova, Arley, Empire, Carbon Hill, Anniston, Arab, Fort Payne, Fultondale, Ringgold Road, LA, and Burnsville, MS. Blacks include residents of Brookside, Birmingham, Hoover, Bessemer, and Center Point.

also observed that drug-related citations were issued on roadways and corridors that wind throughout the town. These corridors include Main Street (at its intersections with Price Street, Church Street, Market Street, and Village Circle) Cherry Avenue (at its intersections with Roberta Road, Daniel Payne Road, Bivens Chapel Road, Republic Road, McConnell Lane, and Canster), and I-22 (at Mile Markers 91 and 93, Cherry Avenue, and Roberta Road). Each of these corridors generated significant drug-related law enforcement action.

We also noted a pattern to stops that sometimes escalated into citations or arrests. A typical stop at or near Village Circle takes place late in the evening, perhaps well after midnight. Black, white, Hispanic and other drivers are stopped. The stop begins when an officer observes a driver apparently failing to signal a turn or to have a proper car tag or fully functional lights. It then progresses to a failure to display insurance, or proper vehicle registration papers, or a valid driver's license. If the officer notices the smell of marijuana, a search of the car ensues. The officer may report that a marijuana cigarette, controlled substance, or drug paraphernalia is in "plain view." The officer may also report that the driver admitted to having used marijuana within the last hour or two (but whether such an admission was made may later be hotly contested). A K-9 unit may suddenly appear, and a search gets underway.

The search of the vehicle may reveal an illegal concealed weapon, cash, or a stash of drugs. The driver will likely be tested to determine whether he or she was operating the vehicle under the influence of an unlawful substance. DUI, illegal drug possession and paraphernalia citations, as well as criminal concealed weapon charges, may follow. The driver will probably be arrested, handcuffed, and taken to jail. The vehicle will be towed and impounded. Any cash or weapons may be seized and subjected to civil forfeiture proceedings. Felony or misdemeanor charges may

be considered by prosecutors or a grand jury. The matter is ultimately placed in the hands of the judicial system for judgment.

This cycle of law enforcement has been repeated over and over the last several years in Brookside. The familiar pattern of minor traffic stops leading to drug possession or trafficking arrests occurred not only at or near Village Circle but also at locations throughout this small town. In the last year alone -- between October 2021 and August 2022 -- drug arrests occurred at Village Circle, I-22, Main Street, North Main Street, Bivens Brookside Road, Cherry Avenue, Timberbrook Circle, and the intersections of Cherry Avenue and Cansler Avenue, Cherry Avenue and Roberta Road, and Cherry Avenue and Republic Avenue. Hundreds of drug-related charges have run the gamut from possession of heroin, cocaine, amphetamines, prescription medication, and crystal meth, together with glass pipes, hypodermic needles, grinders, and scales.

Some individual residents of Village Circle may well have experienced harassment, excessive surveillance, or over-policing. Residents' stories passionately describe those experiences. Ultimately, however, we did not find a statistical pattern of racial profiling.³⁷ Rather,

³⁷ The Department of Justice has established an anti-profiling policy which prohibits federal law enforcement officers from using race or ethnicity to discriminate against neighborhoods:

Authorities May Never Rely on Generalized Stereotypes, But May Rely Only on Specific Race- or Ethnicity-Based Information

This standard categorically bars the use of generalized assumptions based on race. Example: In the course of investigating an auto theft in a federal park, law enforcement authorities could not properly choose to target individuals of a particular race as suspects, based on a generalized assumption that those individuals are more likely to commit crimes.

This bar extends to the use of race-neutral pretexts as an excuse to target minorities. Federal law enforcement may not use such pretexts. This prohibition extends to the use of other, facially race neutral factors as a proxy for overtly targeting persons of a certain race or ethnicity. This concern arises most frequently when aggressive law enforcement efforts are focused on "high crime areas." The issue is ultimately one of motivation and evidence; certain seemingly race-based efforts, if properly supported by reliable, empirical data, are in fact race-neutral.

Example: In connection with a new initiative to increase drug arrests, local authorities begin aggressively enforcing speeding, traffic, and other public area laws in a neighborhood predominantly occupied by people of a single race. The choice of neighborhood was not based on the number of 911 calls, number of arrests, or other pertinent reporting

we found wide-spread ticketing throughout multiple racial and ethnic groups. An example of what unlawful neighborhood profiling looks like is thoroughly described in a class action lawsuit against Madison County, Mississippi. The Madison County case resulted in a consent decree creating race neutral law enforcement policies and procedures for pedestrian stops, unbiased policing, checkpoints, training, and supervision.³⁸ Nonetheless, we recognize that individual instances of targeting can easily occur while escaping detection in statistical studies.

data specific to that area, but only on the general assumption that more drug-related crime occurs in that neighborhood because of its racial composition. This effort would be improper because it is based on generalized stereotypes.

Example: Authorities seeking to increase drug arrests use tracking software to plot out where, if anywhere, drug arrests are concentrated in a particular city, and discover that the clear majority of drug arrests occur in particular precincts that happen to be neighborhoods predominantly occupied by people of a single race. So long as they are not motivated by racial animus, authorities can properly decide to enforce all laws aggressively in that area, including less serious quality of life ordinances, as a means of increasing drug-related arrests. See, e.g., *United States v. Montero Camargo*, 208 F.3d 1122, 1138 (9th Cir. 2000) ("We must be particularly careful to ensure that a 'high crime' area factor is not used with respect to entire neighborhoods or communities in which members of minority groups regularly go about their daily business, but is limited to specific, circumscribed locations where particular crimes occur with unusual regularity.").

³⁸ The lawsuit is entitled, *Latoya Brown, et al. v. Madison County, Mississippi, and Sheriff Randall S. Tucker, et al*, Civil Action No. 3:17-cv-00347-CWR-LRA. The complaint alleges:

1. The Sheriff's Department of Madison County, Mississippi ("MCSD") implements a coordinated top-down program of methodically targeting Black individuals for suspicionless searches and seizures while they are driving their cars, walking in their neighborhoods, or even just spending time in their own homes (the "Policing Program"). MCSD deputies frequently use unjustified and excessive force in conducting these searches and seizures.

2. The MCSD's Policing Program impacts virtually every aspect of Black residents' lives. Simple daily activities—such as commuting to work, grocery shopping, visiting friends and family, attending church, or even sitting on the steps outside one's own home—present the very real possibility of unlawful and humiliating searches and seizures, as well as the attendant

prospect of arrest and jail time for unpaid fines and fees.

3. As a result, many Black residents of Madison County experience chronic fear and anxiety, disruptions to their everyday activities, restrictions on travel within their own neighborhoods and towns, and a tremendous reluctance to contact law enforcement officials for assistance when necessary. Some Black community members go so far as to avoid leaving their homes to limit the risk of encountering one of the MCSD's many illegal roadblocks or pedestrian "checkpoints" described below. In effect, the Policing Program has placed the Black community of Madison County under a permanent state of siege.

4. The hallmark tactics of the MCSD's longstanding and deeply-entrenched Policing Program include:

- vehicular roadblocks designed and placed to target Black individuals for highly intrusive, pretextual, and suspicionless searches and seizures in Madison County's majority-Black towns, residential neighborhoods, and business districts;
- pedestrian "checkpoints" designed to target Black individuals for suspicionless searches and seizures, including while entering or exiting predominantly-Black housing complexes;
- warrantless and consentless searches of the homes of Black residents, sometimes accompanied by suspicionless searches and seizures of all persons within; and
- "Jump Out" patrols of plainclothes deputies deployed in unmarked cars in Black communities to stealthily and aggressively target Black individuals for unreasonable searches and seizures.

VIII. Brookside's Strategy of Using Traffic Enforcement to Combat Drug Activity was Overly Broad, and Created Too Much Risk for Ordinary Citizens and Police Officers

We listened carefully to all residents' concerns voiced at the town halls. We determined that we could not evaluate those concerns – or the even-handedness of the law enforcement strategy – without taking a closer look at the strategy itself. We were able to see that Village Circle law enforcement is enhanced in part because the area and other locations in Brookside are viewed as drug “hot spots.” Indeed, the problem of illegal drug activity appears to be a key driver underlying Brookside's overall enhanced traffic enforcement program. Arguably the Brookside Police Department was justified in taking an aggressive stance toward the invasion of their town by drug traffickers, crack house squatters, and other criminal enterprises. These unlawful, disruptive activities also bred counterfeiting, stolen property fencing, drug overdosing, and prostitution. Yet Brookside's strategy of using traffic enforcement tools to fight drug trafficking was an overly broad, high-risk, single level strategy which imposed significant costs.

5. The MCSD has deployed the unconstitutional racially discriminatory policing tactics described above pursuant to a single overarching policy, custom, and/or practice of systematically conducting unreasonable searches and seizures of persons, homes, cars, and property on the basis of race.

9. The MCSD's Policing Program has resulted in stark racial disparities in policing outcomes that cannot be explained by alternative non-race-based factors. Although only 38% of Madison County residents are Black approximately 73% of arrests in Madison County between May and September of 2016 were of Black individuals. Only 23% arrests during this time period were of white individuals, even though Madison County is 57% white. These statistics suggest that the arrest rate for Black individuals is nearly five times the arrest rate for white individuals in Madison County.

10. Because the MCSD targets Black communities for roadblocks and suspicionless pedestrian stops, the vast majority of individuals arrested at roadblocks and pedestrian stops in Madison County are Black. Between May and September 2016, 81% of arrests at roadblocks and 82% of arrests at pedestrian stops in Madison County were of Black individuals.

11. At roadblocks and pedestrian stops, the MCSD overwhelmingly arrests Black individuals. However, white arrestees are 1.4 times more likely than Black arrestees to be charged with driving under the influence of drugs or alcohol. They are 1.1 times more likely to be charged with a drug crime. In contrast, Black arrestees face over 3.2 times the odds for white individuals of being charged only with a petty revenue-generating vehicle infraction, like having a burned out headlight or no seat belt. This data suggests a pattern of population-targeted as opposed to public safety-motivated policing.

The task of developing an effective strategy to disrupt local drug markets and hot spots involves a multi-layered, carefully constructed approach. It cannot be one-dimensional. From the outside, Brookside's strategy appears to have been aimed at street-level operatives and users. Perhaps a more effective strategy would have involved working with other agencies to target players at higher levels of the pyramid while simultaneously targeting dealers and users by attacking the transactional level of selling and buying.³⁹ Brookside's strategy could have included multiple pathways to disrupt street level drug markets—not only traffic enforcement.⁴⁰ While Brookside's enforcement program resulted in hundreds of citations and arrests, it created the risk of unnecessarily endangering ordinary citizens and many police officers.⁴¹ By focusing so much

³⁹ Targeting the upper tier of DTOs ("Drug Trafficking Organizations"), where resources and opportunity are present, can yield significant results. For example, on September 6, 2022, *al.com* reported on a multi-agency operation against the leaders of a meth enterprise. The news story concerned the sentencing of a Hoover man who was sentenced to federal prison for running a large-scale methamphetamine trafficking organization from Hoover's Ross Bridge neighborhood. He was charged with conspiring to distribute and possess methamphetamine, possession with intent to distribute methamphetamine, and possessing several firearms in furtherance of a drug trafficking crime. He was sentenced to federal prison along with co-conspirators from Empire, Cullman, Bessemer, and Birmingham. The investigation leading to the arrests and conviction included the Organized Crime Drug Enforcement Task Force led by the DEA, FBI, and the U.S. Attorney's Office. See Carol Robinson, "Ross Bridge man who ran large meth op gets prison after bedroom fan recorded drug sales," September 6, 2022, <https://www.al.com/news/2022/09/ross-bridge-man-who-ran-large-meth-op-gets-prison-after-ceiling-fan-recorded-drug-sales.html>.

⁴⁰ For a discussion of various strategies to attack drug hot spots, see Jessica Jacobson, "Policing Drug Hot Spots," Policing & Reducing Crime Briefing Note, A Publication of the Policing and Reducing Crime Unit, Home Office Research, Development and Statistics Directorate, Police Research Series No. 109 (May 1999); https://popcenter.asu.edu/sites/default/files/Responses/police_crackdowns/PDFs/JacobsonBN.pdf.

⁴¹ The danger of over-policing is real both for police and the public:

Before a police shooting makes headlines, before the shooting ever happens, there is the moment of contact between the police officer and the eventual victim. Sometimes the officer is responding to a dangerous situation, like a report of a man with a gun. Other times, the contact is initiated by the officer because of excessive speeding or reckless driving that poses a risk to other drivers. And sometimes the reason for the contact is an officer's legally baseless hunch and a minor violation of a traffic law—like a burned out taillight—that escalates into an unnecessary tragedy. This last type of contact is what led to the shooting death of Philando Castile in a Minneapolis-St. Paul suburb.

American policing today has become increasingly aggressive and, at times, even predatory. Policies and tactics have evolved to make police contact more confrontational. In so doing, they have increased the chances of violence and fatal uses of force. This has been particularly true of efforts aimed at fighting the Drug War. Police are incentivized to initiate unnecessary contact with pedestrians and motorists, and they do so most often against ethnic

attention on traffic enforcement as a primary tool against drug trafficking – making nearly 8,000 stops and issuing 13,000 pages of citations -- the Police Department possibly missed opportunities to use its resources more effectively.

We recommend that Police Department leadership strategically formulate drug enforcement targets by prioritizing the most dangerous drugs; that is, drugs which create the most serious threats to human life and property. According to the 2023 *Alabama Drug Threat*

and racial minorities. Such over-policing engenders resentment among minority communities and jeopardizes public safety.

Some of the Drug War's most disturbing images involve police officers in SWAT gear, kicking down doors, ransacking homes and endangering the lives of everyone inside during pre-dawn raids. Officers rummaging through a car for drug contraband while the driver sits helplessly on the sidewalk as onlookers drive by may be less violent, but is just as invasive and degrading. This experience can be humiliating under any circumstance, and any perception of race as playing a role in the stop piles resentment on top of humiliation.

The “pretextual” or “investigatory” stop is a common police tactic to investigate potential criminal activity—particularly drug possession and trafficking—in situations where there is no legal reason to suspect a crime is occurring. There is not a large amount of data on how often these stops produce contraband seizures, but what data there is suggests that the overwhelming majority of people who are stopped are guilty of no crime. Much like the pedestrian stops during the heyday of New York City’s “Stop and Frisk” program, most of the motorists stopped for investigatory purposes are black or Hispanic. Those who are stopped are often pressured to give consent to a search the officer has no legal right to demand.

There is evidence that some police departments, particularly state police and drug task forces in the American interior, target motorists with out-of-state plates in the hopes of finding drug proceeds and other unexplained cash. Cash-driven interdiction is the result of asset forfeiture laws that allow police departments to keep the proceeds of assets seized in connection with suspected crimes. This “policing for profit” puts budgetary concerns above public safety.

Officers are also trained to prepare for the possibility of violence in every encounter. Anti-police attacks such as the recent tragedies in Dallas and Baton Rouge heighten the fear and trepidation some officers feel in the field. While fewer police officers are feloniously killed in the line of duty per year than at almost any time in American history, officers who find themselves in stressful situations may be more likely to resort to the use of force, including deadly force, in order to maintain their sense of control during such encounters.

In short, the laws and tactics employed to fight the Drug War have transformed police officers from those who protect and serve to a force that, too often, actively searches the innocent and seizes for profit. Aggressive and antagonistic policing also increases the likelihood of disagreement, thereby increasing the possibility of escalation and the use of force that could lead to the injury or death of an innocent person. But the effects of aggressive policing extend beyond the outcome of any given police stop.

Jonathan Blanks, “The War on Drugs Has Made Policing More Violent,” *Democracy Journal* (July 19, 2016); <https://democracyjournal.org/?s=war+on+drugs+policing+more+violent>.

Assessment, “fentanyl and other opioids [are] the number one greatest drug threat across the State.... Methamphetamine which has held the number one spot for several years has fallen to number two, with heroin, cocaine, marijuana, and controlled prescription drugs following. Fentanyl and methamphetamine are continuing to show increases in abuse, and fentanyl is now being seen mixed in and/or disguised with many illegal drugs.”⁴² These drugs generate the most

⁴² 2023 *Alabama Drug Threat Assessment*, p.3 (2023), prepared by the Alabama Operations Center/Gulf Coast HIDTA; <https://druguse.alabama.gov/assets/files/2023AlabamaDrugThreatAssessment.pdf>. According to the Alabama Department of Mental Health, methamphetamine is the drug most commonly attributed to treatment admissions in 2021, followed by marijuana, heroin, controlled prescription drugs, cocaine, fentanyl, and new psychoactive drugs. The number of treatment admissions related to controlled prescription drugs, cocaine, and new psychoactive drugs decreased from 2020 to 2021, while methamphetamine, marijuana, heroin, and fentanyl increased. The drug with the highest admission increase was fentanyl, at 78% increase.

- Fentanyl and other Opioids

In 2021, fentanyl and other opioids became the greatest drug threat by law enforcement, outranking methamphetamine by only 3%. Treatment and prevention respondents ranked fentanyl as the second greatest drug threat, followed closely behind methamphetamine. According to the 2023 GC HIDTA Drug Survey, forty-seven law enforcement respondents ranked fentanyl just above methamphetamine as the drug of greatest threat. The largest increase in mental health admission data was attributed to fentanyl in 2021 according to The Department of Mental Health. The overdose death rate in Alabama continues to increase. Jefferson County alone reported 316 fentanyl related overdose deaths in 2021, a 68% increase from 188 fentanyl related overdose deaths in 2020.

- Methamphetamine

Methamphetamine was reported as the second greatest drug threat by forty seven percent of law enforcement respondents. However, the majority (39%) of treatment and prevention respondents reported methamphetamine as their greatest drug threat in 2021. Methamphetamine was also reported as the greatest contributor to violent crime, property crime, and law enforcement resources used by law enforcement respondents. In 2021, there was one methamphetamine laboratory seizure in Alabama according to the El Paso Intelligence Center (EPIC).

- Heroin

Both law enforcement and treatment and prevention respondents reported heroin as the third greatest drug threat in Alabama. The Alabama Department of Mental Health also ranked heroin as the third most abused illegal drug based on treatment admissions. Law enforcement respondents also reported an increase in heroin availability, demand, and distribution in the State.

- Controlled Prescription Drugs

Hydrocodone (lortab and vicodin) and oxycodone (oxycontin, roxycontin) continue to be the most frequently abused pharmaceutical drugs in Alabama as reported by the Alabama Department of Mental Health. Alprazolam (Xanax) and Percocet are also heavily abused. Pharmaceutical diversion remains the primary method of obtaining pharmaceuticals; however, pharmaceuticals transported into the state by vehicle or postal packaging also persists. There is a moderate to high availability of controlled prescription drugs in Alabama according to law enforcement respondents. Law enforcement respondents also reported the level of availability, demand, distribution, and transportation remained the same this year.

- Cocaine

Cocaine remains available in Alabama; however, cocaine poses a lower threat compared to other illicit drugs in Alabama. Cocaine was ranked as the fourth greatest drug threat according to law enforcement respondents, and the sixth greatest drug threat according to treatment and prevention respondents on the GC HIDTA Survey of 2023. According to the Alabama Department of Mental Health admissions data, cocaine has now dropped to sixth behind methamphetamine, marijuana, heroin, and controlled prescription drugs within the Alabama Threat Assessment.

violent crimes and destruction of property. The violent crime and property threats presented by methamphetamine, according to the *Drug Threat Assessment*, are 300% to 3000% greater than the threat presented by marijuana.⁴³ Yet, the possession of marijuana by end users – along with

- Marijuana

Both law enforcement respondents and treatment and prevention respondents report Marijuana as the second most available drug in Alabama, behind methamphetamine. The Alabama Department of Mental Health lists marijuana as the number two illegal drug according to treatment admissions, based on the drugs monitored by the Gulf Coast HIDTA. Marijuana related mental health treatment admissions slightly decreased from 5,086 admissions in 2020 to 5,045 admissions in 2021. Marijuana is reported as the third greatest contributor to violent crime and law enforcement resources used in 2021. The Marijuana Eradication Program eradicated a total of 24,426 plants both indoor and outdoor in 2021.

- New Psychoactive Drugs

The Alabama Department of Mental Health, as well as the Department of Forensic Sciences list gamma hydroxybutyric (GHB) and lysergic acid diethylamide (LSD) as new psychoactive drugs encountered in Alabama although not commonly. Synthetic cannabinoids such as Spice are most commonly encountered new psychoactive substance in Alabama. The Department of Forensic Sciences has seen a big increase of the synthetic drug 5-fluoro MDMB-PICA which went from 2,124.86 grams analyzed in 2020 to 9,412.29 grams analyzed in 2021. The Alabama Department of Mental Health showed a decrease in the new psychoactive drugs which went from 480 individuals seeking treatment in 2020 to 270 individuals seeking treatment in 2021.

⁴³ According to the 2021 assessment, law enforcement ranked “methamphetamine as the primary drug threat in Alabama. Methamphetamine also had the number one ranking of drug of greatest threat amongst the treatment survey. With all the drugs that are measured on the GC HIDTA Survey the law enforcement respondents did rank methamphetamine as being the greatest available drug in the State. Methamphetamine continues to be the number one drug responsible in both property and violent crime. Methamphetamine is available from two sources: locally produced methamphetamine, and methamphetamine transported into the area via the Interstate Highway System. Most of what is seen in Alabama is generally from the Southwest Border. Distribution Results from the 2021 GC HIDTA Drug Survey indicate Caucasian American are still the DTOs that are the primary wholesale and retail distributors of methamphetamine. <https://druguse.alabama.gov/assets/files/2021AlabamaDrugThreatAssessment.pdf>, pp.17-20. In the 2021 report, the following assessments were made:

- Fentanyl and other Opioids Fentanyl and the fentanyl derivatives continue to climb in ranking when it comes to the greatest drug threat. For the 2021 GC HIDTA Drug Survey, respondents ranked fentanyl behind methamphetamine as the drug of greatest threat. This category of drug is continuing to see an increase, and this is very concerning since this drug can be very dangerous. Fentanyl has been found in pills and mixed as a powder with heroin and other drugs. This drug is probably the most dangerous for not only the illicit user but for law enforcement. The death rate from fentanyl alone is showing an increase in Alabama. This would account for the threat level amongst law enforcement moving this drug up to the second greatest threat. According to the 2021 GC HIDTA Drug Survey, Black Americans are the primary street level dealers of fentanyl and other opioids. Caucasian Americans have been identified as transporting the majority of fentanyl and other opioids. Fentanyl and the other opioids category ranked fourth according to the 2021 GC HIDTA Drug Survey for violent crime, however, the rank was very small in the property crime category. Fentanyl and other opioids are not produced here in Alabama. Most of these opioids abused in Alabama are transported in from out of state or are obtained from internet sources and shipped via parcel postal routes.
- Heroin Respondents to the law enforcement part of the 2021 GC HIDTA Drug Survey have listed heroin as the third greatest drug threat in Alabama. The treatment centers on the GC HIDTA Survey listed heroin as their number four drug of threat. Heroin is a highly addictive drug processed from morphine, a naturally occurring substance extracted from the seed pod of certain varieties of poppy plants grown in Southeast Asia (Thailand, Laos, and Myanmar, Burma), Southwest Asia (Afghanistan and Pakistan), Mexico and Colombia. Heroin comes in several forms, the main forms being “black tar” from Mexico (found primarily in the western United States) and white heroin from Colombia (primarily sold on the East Coast). Some of the common street names are: Big H, Black Tar, Chiva, Hell Dust, Horse, Negra, Smack, Hair and Thunder. Heroin is typically sold as a white or brownish powder, or as a black sticky substance known on the streets as “black tar heroin.” Heroin can be injected, smoked, or sniffed/snorted. High purity heroin is

usually snorted or smoked. Because it enters the brain so rapidly, heroin is particularly addictive, both psychologically and physically. Most of the heroin being seen in Alabama is of the powder form. Heroin abuse and death is continuing to be seen throughout Alabama; however, the death rate has seen a slight decline over this past year. According to the 2021 GC HIDTA Drug Survey data, respondents indicated that Black Americans are now considered the primary group responsible for retail distribution of heroin in Alabama. According to the 2021 GC HIDTA Drug Survey, heroin is still not listed as a drug that most contributes to violent or property crime statewide. 5. Production Opium is not cultivated nor is heroin produced in Alabama. Heroin is produced primarily in Mexico, South America, Middle East, Southeast Asia, and Southwest Asia. 6. Transportation Black American DTOs have taken over as being the primary transporters of heroin to Alabama. Heroin is primarily transported to Alabama overland via private, commercial, and rental vehicles. With heroin availability and abuse continuing to rise in Alabama, Naloxone treatment will most certainly increase. Naloxone is a pure opioid antagonist which is used to counter the effects of an opioid, in overdoses. pp.24-25

- **Controlled Prescription Drugs** Over the past several years the two highest controlled prescription drugs according to Mental Health statistics have been oxycontin and hydrocodone. Hydrocodone (Lortab and Vicodin) and Oxycodone (Oxycontin, Roxycotin) continue to be the most abused pharmaceutical drugs in Alabama as reported by the Alabama Department of Mental Health. Alprazolam (Xanax) and hydromorphone (Dilaudid) are also heavily abused. According to the Alabama Department of Mental Health, hydrocodone, oxycodone, and alprazolam were identified as being among the most commonly abused pharmaceuticals in Alabama. Data from the drug survey indicates controlled prescription drugs are now ranked ahead of marijuana according to law enforcement and they are ranked second behind methamphetamine. According to the 2021 GC HIDTA Drug Survey respondents, Caucasian Americans are the primary street level dealers of pharmaceuticals. Caucasian Americans have been identified as transporting the majority of diverted pharmaceuticals into Alabama. Pharmaceutical diversion remains the primary method of obtaining pharmaceuticals; however, pharmaceuticals transported into the state by vehicle or postal packaging also exists. The majority of the pharmaceuticals abused in Alabama are transported in from out of state or are obtained from forged prescriptions or Internet pharmacies. Pharmaceutical are primarily transported via private and commercial vehicles, however some pharmaceuticals are shipped to the state via mail services. Controlled prescription drugs are not significant contributors to property crime or violent crime.

- **Cocaine** is now ranked as number five drug of threat in Alabama. Cocaine is ranked within the top three drugs relating to both violent and property crimes in the state. The most common form of cocaine being seen in the state is in the form of crack and is most commonly sold in rocks. The crime and violence associated with crack cocaine continues to be high according to law enforcement in Alabama. As seen in the previous charts, cocaine ranks high as a leading contributor to both violent and property crimes. Coca is not cultivated nor is cocaine produced within Alabama, but rather originates in South America and is transported into Alabama via hub cities along the Southwest Border and through Atlanta. Wholesale levels of cocaine are generally sold in powder form with street level retailers converting the powder cocaine to crack cocaine prior to retail Black American DTOs are primarily responsible for most of the powder and crack cocaine transported into Alabama. Cocaine is transported to the area overland in private and commercial vehicles. Bulk quantities of cocaine are usually transported in powdered form to local DTOs who convert the powder cocaine into crack prior to retail distribution.

- **Other Dangerous Drugs** The Alabama Department of Mental Health, as well as the Department of Forensic Sciences list gamma hydroxybutyric (GHB) and lysergic acid diethylamide (LSD) as drugs that are not seen much in their capacity. The number one drugs in this category which are being seen more and more are the synthetic cannabinoids. The Department of Forensic Sciences is seeing more and more of the synthetic drug XLR11 which has seen a huge intake in 2019 from 2018. The Alabama Department of Mental Health continues to see increases in admissions for spice, carisoprodol (Soma), and other drugs which increased from 192 individuals seeking treatment in 2018 to 213 individuals seeking treatment in 2019

- **Marijuana** is no longer the most abused or most available drug in Alabama. The Alabama Department of Mental Health lists marijuana as the number two illegal drug based on treatment admissions. This is the first time marijuana has dropped behind another drug in treatment admissions since the GC HIDTA has been tracking. Marijuana has also dropped as being the most available drug in Alabama, it fell slightly behind methamphetamine for 2019. Alabama has not legalized marijuana for recreational use but there are measures for medical use CBD in place. Marijuana is grown indoors, outdoors, and hydroponically in Alabama and according to the 2021 GC HIDTA Drug Survey, is primarily distributed and abused by black Americans. The Marijuana Eradication Program eradicated a total of 15,330 plants both indoor and outdoor. Law enforcement respondents to the GC HIDTA survey indicated the primary wholesale and retail distributors of marijuana are black American DTOs. Most marijuana seized in Alabama occurs during traffic stops via highway interdiction. According to the GC HIDTA Watch Center the total quantity of marijuana seized in

paraphernalia used to inhale the drug – are among the most common drug arrests in Brookside. Again, it seems that the town’s law enforcement resources could be deployed more effectively by assigning a higher level of priority to the more serious trafficking problems.⁴⁴

traffic stops for Alabama in 2019 was 2,681 pounds. EPIC reported a total of 1,360.5 kilograms seized in traffic stops for Alabama not including edible marijuana or synthetic marijuana. According to the 2021 GC HIDTA Drug Survey, the majority of bulk marijuana is transported mainly from the states of California and Colorado. Pp.39-40

⁴⁴. The soundness of a strategically prioritized approach is confirmed by a major law enforcement organization. The following resolution was submitted by the Narcotics and Dangerous Drugs Committee of the International Association of Chiefs of Police:

WHEREAS, violent crime is a defining features of illicit drug markets; and
WHEREAS, enormous profits associated with drug trafficking enable transnational criminal organizations and foreign terrorist organizations to finance criminal and terrorist activities; and
WHEREAS, transnational criminal organizations have permeated many countries throughout the world, including the United States, threaten the safety and security of the public, derive revenue through widespread illegal conduct—including acts of violence—and are responsible for promoting high levels of drug addiction and abuse; and
WHEREAS, violent street gangs remain the primary retail-level distributors of illicit drugs in their respective territories and vie for control of lucrative drug trafficking markets, which continues to fuel the majority of gang violence; and
WHEREAS, some 33,000 violent gangs are criminally active in the United States and employ violence and intimidation to control neighborhoods and enhance their illegal money-making activities, including robbery, extortion, drug trafficking, arms smuggling, and a multitude of other crimes; and
WHEREAS, inter-gang conflict and drug-related factors affect local levels of violence; and
WHEREAS, federal prisons hold tens of thousands of drug traffickers, many weapons offenders, and other dangerous individuals, including nearly 23,000 gang-affiliated inmates; and
WHEREAS, drug traffickers have a more extensive arrest history than other offenders and tend to be more likely to commit other criminal activity than are other types of offenders with over 72 percent of drug offenders in U.S. federal prison having at least some criminal history; and
WHEREAS, among the 19,765 federal defendants convicted for drug trafficking in the United States during FY 2019, 55 percent had at least two prior criminal history points, indicating a substantial criminal history; and
WHEREAS, as of 2017, 28 percent of federal drug offenders convicted of drug trafficking offenses carrying mandatory minimum penalties had a conviction or guideline finding involving the use of a weapon, violence or credible threats of violence, or death or serious bodily injury; and
WHEREAS, numerous studies have found a correlation between methamphetamine and increased violent crime including domestic violence property crimes, and homicide; and
WHEREAS, the connection between drug trafficking and violence is so well-settled that courts have repeatedly held that guns and other weapons are the “tools of the trade” of drug traffickers; and
WHEREAS, more than 67,000 people in the United States were killed by drugs in 2018 alone; therefore, be it
RESOLVED, that the International Association of Chiefs of Police (IACP) strongly urges the steadfast enforcement of drug trafficking laws at the federal, state, and local levels to combat violent crimes while prioritizing the drug traffickers who pose the greatest threat to our communities and exacerbate the drug problem by employing violence to facilitate the drug trade.

<https://www.theiacp.org/resources/resolution/combating-violent-crime-through-steadfast-enforcement-of-drug-trafficking-laws>

IX. Brookside Town Leadership has a Responsibility to Provide Oversight and Accountability to the Police Department

The Brookside Town Council must lead the way forward. It has a duty to the community and the Police Department to ensure the Department has oversight, structure, organization, and control. The American Bar Association has acknowledged the *ad hoc* nature of police work, the absence of coherent police planning by state and local governments, and the need for clear law enforcement standards and priorities. To that end, it has established the ABA Police Function Standards to provide guidelines and direction for police policymaking.⁴⁵ The town could benefit from using the standards to engage in strategic planning aimed at elevating its police enterprise.

⁴⁵ The Criminal Justice Standards adopted by the American Bar Association identify general principles for police functions, police objectives and priorities, and the role of local governments, courts, and legislatures in controlling police organizations. The standards are presented below:

Police Function Standards

PART I. GENERAL PRINCIPLES

Standard 1-1.1. Complexity of police task

(a) Since police, as an agency of the criminal justice system, have a major responsibility for dealing with serious crime, efforts should continually be made to improve the capacity of police to discharge this responsibility effectively. It should also be recognized, however, that police effectiveness in dealing with crime is often largely dependent upon the effectiveness of other agencies both within and outside the criminal justice system. Those in the system must work together through liaison, cooperation, and constructive joint effort. This effort is vital to the effective operation of the police and the entire criminal justice system

(b) To achieve optimum police effectiveness, the police should be recognized as having complex and multiple tasks to perform in addition to identifying and apprehending persons committing serious criminal offenses. Such other police tasks include protection of certain rights such as to speak and to assemble, participation either directly or in conjunction with other public and social agencies in the prevention of criminal and delinquent behavior, maintenance of order and control of pedestrian and vehicular traffic, resolution of conflict, and assistance to citizens in need of help such as a disabled person.

(c) Recommendations made in these standards are based on the view that this diversity of responsibility is likely to continue and, more importantly, that police authority and skills are needed to handle appropriately a wide variety of community problems.

PART II. POLICE OBJECTIVES AND PRIORITIES

Standard 1-2.1. Factors accounting for responsibilities given police

The wide range of government tasks currently assigned to police has been given, to a great degree, without any coherent planning by state or local governments of what the overriding objectives or priorities of the police should be. Instead, what police do is determined largely on an *ad hoc* basis by a number of factors

which influence their involvement in responding to various government or community needs. These factors include:

- (a) broad legislative mandates to the police;
- (b) the authority of the police to use force lawfully;
- (c) the investigative ability of the police;
- (d) the twenty-four-hour availability of the police;
- (e) community pressures on the police; and
- (f) court decisions.

Standard 1-2.2. Major current responsibilities of police

In assessing appropriate objectives and priorities for police service, local communities should initially recognize that most police agencies are currently given responsibility, by design or default, to:

- (a) identify criminal offenders and criminal activity and, where appropriate, to apprehend offenders and participate in subsequent court proceedings;
- (b) reduce the opportunities for the commission of some crimes through preventive patrol and other measures;
- (c) aid individuals who are in danger of physical harm;
- (d) protect constitutional guarantees;
- (e) facilitate the movement of people and vehicles;
- (f) assist those who cannot care for themselves;
- (g) resolve conflict;
- (h) identify problems that are potentially serious law enforcement or governmental problems;
- (i) create and maintain a feeling of security in the community;
- (j) promote and preserve civil order; and
- (k) provide other services on an emergency basis.

Standard 1-2.3. Need for local objectives and priorities

While the scope and objectives of the exercise of the government's police power are properly determined in the first instance by state and local legislative bodies within the limits fixed by the Constitution and by court decisions, it should be recognized that there is considerable latitude remaining with local government to develop an overall direction for police services. Within these limits, each local jurisdiction should decide upon objectives and priorities. Decisions regarding police resources, police personnel needs, police organization, and relations with other government agencies should then be made in a way that will best achieve the objectives and priorities of a particular locality.

Standard 1-2.4. General criteria for objectives and priorities

In formulating an overall direction for police services and in selecting appropriate objectives and priorities for the police, communities should be guided by certain principles that should be inherent in a democratic society:

(a) The highest duties of government, and therefore the police, are to safeguard freedom, to preserve life and property, to protect the constitutional rights of citizens and maintain respect for the rule of law by proper enforcement thereof, and, thereby, to preserve democratic processes.

(b) Implicit within this duty, the police have the responsibility for maintaining that degree of public order which is consistent with freedom and which is essential if our diverse society is to be maintained.

(c) In implementing their varied responsibilities, police must provide maximum opportunity for achieving desired social change by freely available, lawful, and orderly means.

(d) In order to maximize the use of the special authority and ability of the police, it is appropriate for government, in developing objectives and priorities for police services, to give emphasis to those social and behavioral problems which may require the use of force or the use of special investigative abilities which the police possess. Given the awesome authority of the police to use force and the priority that must be given to preserving life, however, government should firmly establish the principle that the police should be restricted to using the amount of force reasonably necessary in responding to any situation.

* * * * *

PART V. CONTROL OVER POLICE AUTHORITY

Standard 1-5.1. Need for accountability

Since a principal function of police is the safeguarding of democratic processes, high priority must be given for ensuring that the police are made fully accountable to their police administrator and to the public for their actions.

Standard 1-5.2. Need for positive approaches

Control over police practice should, insofar as possible, be positive, creating inducements to perform properly rather than concentrating solely upon penalizing improper police conduct. Among the ways this can be accomplished are:

(a) education and training oriented to the development of professional pride in conforming to the requirements of law and maximizing the values of a democratic society;

(b) inducements to police officers in terms of status, compensation, and promotion, on the basis of criteria that are related as directly as possible to the police function and police goals;

(c) elimination of responsibilities where there is a community expectation that police will “do something” but adequate lawful authority is not provided. Either the needed authority should be given or the police should be relieved of the responsibility;

(d) systematic efforts by prosecutors and judges to encourage conforming police behavior through:

(i) a more careful review of applications for warrants;

(ii) formulation of new procedures to simplify and otherwise provide easy access for judicial review of applications for warrants, thereby encouraging maximum use of the formal warrant process; and

CONCLUSION

During the 2018-2021, time frame, Brookside Police Department leadership cast its enforcement dragnet too widely. The wide scope of traffic enforcement activity affected ordinary citizens. Relatively minor equipment and traffic interactions turned into multiple citations, court appearances, hundreds of thousands of dollars in fines, towed cars, and forfeited property. Instead of focusing on drug trafficking within the town's traditional borders, it pursued regular vehicular traffic outside those boundaries – black, white and Hispanic citizens going to and coming from work, college students working part-time delivering food, local pastors driving late model cars. Many citizens were frightened by masked officers identified only by “Agent X”-type names. Dark-

(iii) formally advising the police administrator when improper police conduct is detected, in order to facilitate corrective action.

(e) recognition by legislatures and courts of police discretion, clarification of police authority to develop administrative policies to control police actions, and the requirement that police do develop such policies; and

(f) effective involvement of the community in the development of police programs.

Standard 1-5.3. Sanctions

(a) Current methods of review and control of police activities include the following sanctions:

(i) the exclusion of evidence obtained by unconstitutional means;

(ii) criminal and tort liability for knowingly engaging in unlawful conduct;

(iii) injunctive actions to terminate a pattern of unlawful conduct; and

(iv) local procedures for handling complaints against police officers, procedures which usually operate administratively within police departments.

(b) Legislatures should clarify the authority of police agencies to develop substantive and procedural rules controlling police authority – particularly regarding investigatory methods, the use of force, and enforcement policies – and creating methods for discovering and dealing with abuses of that authority. Where adequate administrative sanctions are in effect, evidence obtained in violation of administrative rules should not be excluded in criminal proceedings.

See ABA CJS Police Function Standards (July 2020); copyright by the American Bar Association. https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_urbanpolice/

colored SUVs were not plainly marked as Brookside vehicles. K-9 units and tow trucks appeared out of nowhere. Women felt threatened and feared being raped. Drivers were stopped, ticketed and fined for relatively small offenses. African American drivers perceived racially discriminatory behavior by some officers. By using heavy-handed tactics against too many citizens, the Police Department risked abusing its authority.

We conclude our report by recommending that new Brookside Police Department leadership adopt specific policies aimed at targeting its law enforcement efforts in more strategic ways. First, it should avoid racial profiling and selective enforcement. Model policies and procedures adopted in many places around the country provide a new standard of professionalism for law enforcement organizations.⁴⁶ Brookside should consider such a policy.

Second, the town would likely benefit from a relationship with a research organization to provide annual information on the existence of any red flags detected in statistical trends and patterns. Leadership should be aware that large-scale statistical analyses are inherently untimely and mask individual behavior. Careful examination of individual officer behavior is also important. The town could benefit from a formal complaint procedure to provide real time information on alleged racial profiling incidents – or incidents of alleged misbehavior of any kind

⁴⁶ See, e.g., Arkansas's Sample Policies on Bias Based Policing (May 2017); Office of the Kansas Attorney General Racial and Other Biased-Based Policing; Minnesota's Avoiding Racial Profiling Model Policy; Missouri Model Racial Profiling Policy; and Nebraska Commission on Law Enforcement and Criminal Justice, Model Racial Profiling Policy. Available at <https://ncc.nebraska.gov/racial-profiling-advisory-committee>, https://static.ark.org/eeuploads/arml/Sample%20Bias%20Based%20Policing%20June%202014_WEB.pdf; <https://ag.ks.gov/public-safety/racial-and-bias-based-policing>; <https://dps.mn.gov/entity/post/model-policies-learning-objectives/Documents/AVOIDING%20RACIAL%20PROFILING%20MODEL%20POLICY%2010-15.pdf>; <https://www.aele.org/mopol.htm>.

-- at the individual officer level. Periodic review of bodycam video can be used to monitor and investigate possible profiling or other alleged misconduct.

Third, police leadership and individual officers would likely benefit from training focused not only on racial profiling, but also on overall traffic enforcement strategy. Citizen and officer safety, and protection of constitutional rights, should be among the prime goals of such training. The goals should include elevating professionalism at each level of law enforcement and civilian oversight.

Fourth, Brookside should avoid over-policing and overly broad traffic enforcement which creates the appearance of ticketing for revenue. Such an appearance is created when a vastly disproportionate number of citations are issued given the town's population, and a high number of citations involve minor mechanical and traffic offenses. Over-policing can also create the perception of racial profiling when it appears to target minority citizens. Town leadership should be proactive in providing oversight, accountability, and checks and balances in the Department's management and ensure that police operations comply with regulatory, judicial, ethical, and financial safeguards.

Fifth, the town needs help in fighting drug trafficking. No community—small or large — can do it alone. Leadership at every level of government is required to make our cities and towns safer. We encourage Brookside to form more partnerships with local, state and federal authorities to fully take back the town. As we have seen, overly aggressive traffic enforcement is not the way forward. Smart, targeted strategies administered in an even-handed fashion will maximize results and public support for Brookside.

Finally, the town should engage in strategic planning to ensure that the Police Department is governed by adequate oversight, structure, and controls. The American Bar Association has identified principles, objectives and priorities to provide guidelines for the exercise of officer discretion, eliminate *ad hoc* decision making and bolster police effectiveness.