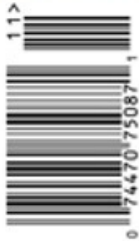


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In Version After Version

Images: Bethany Collins

Text: Natasha Trethewey

Bethany Collins' *A Pattern or Practice* (2015) is a new body of work comprising blind-embossed reproductions of each page from the Department of Justice report on racist policing and court practices in Ferguson, MO. The series is a reflection of Collins' critical artistic practice, which Holland Cotter, writing in *The New York Times*, has described as using the primary material of "language itself, viewed as intrinsically racialized" To extend this exploration of the interaction of words and race, selections from *A Pattern or Practice* are reproduced here alongside "Miracle of the Black Leg," a poem by Pulitzer Prize winner and 2011–2012 Poet Laureate Natasha Trethewey. These works provide two approaches to a single dilemma: Collins' paper-white visualization of the violence described in the Ferguson report provides counterpoint to the shaking visuals conveyed by Trethewey in words; the result complicates the respective and expected roles of text and image, while calmly bringing to light the unfathomable violence of the bureaucratic unseen.

Bethany Collins is a multidisciplinary artist. Her works have been exhibited in solo and group exhibitions at the Studio Museum in Harlem, the High Museum of Art and the Museum of Contemporary Art of Georgia in Atlanta, and the Flint Institute of Arts in Flint, MI. Collins has been recognized as an Artist-in-Residence at Harlem's Studio Museum, and she won Georgia's Hudgens Prize in 2015.

Natasha Trethewey won the 2006 Pulitzer Prize for poetry. She served as the 19th Poet Laureate of the United States, 2010–2012. She is the author of four acclaimed collections of poetry, including *Bellocq's Ophelia*. She is currently Robert W. Woodruff Professor of English and Creative Writing at Emory University in Atlanta.

Collins and Trethewey will both join ART PAPERS LIVE at the Birmingham Museum of Art in Birmingham, AL, on January 9, 2016, for "What the body can say," a conversation moderated by scholar Ivy Wilson.

All images: Bethany Collins, *A Pattern or Practice*, 2015
[courtesy of Richard Gray Gallery; photo: Tom Van Eynde]

L REPORT SUMMARY

The Civil Rights Division of the United States Department of Justice opened its investigation of the Ferguson Police Department ("FPD") on September 4, 2014. This investigation was initiated under the pattern-or-practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d ("Safe Streets Act"), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d ("Title VI"). This investigation has revealed a pattern or practice of unlawful conduct within the Ferguson Police Department that violates the First, Fourth, and Fourteenth Amendments to the United States Constitution, and federal statutory law.

Over the course of the investigation, we interviewed City officials, including City Manager John Shaw, Mayor James Knowles, Chief of Police Thomas Jackson, Municipal Judge Ronald Brockmeyer, the Municipal Court Clerk, Ferguson's Finance Director, half of FPD's sworn officers, and others. We spent, collectively, approximately 100 person-days onsite in Ferguson. We participated in ride-alongs with on-duty officers, reviewed over 55,000 pages of police records as well as thousands of emails and other electronic materials provided by the police department. Enlisting the assistance of statistical experts, we analyzed FPD's data on stops, searches, citations, and arrests, as well as data collected by the municipal court. We observed four separate sessions of Ferguson Municipal Court, interviewing dozens of people charged with local offenses, and we reviewed third-party studies regarding municipal court practices in Ferguson and St. Louis County more broadly. As in all of our investigations, we sought to engage the local community, conducting hundreds of in-person and telephone interviews of individuals who reside in Ferguson or who have had interactions with the police department. We contacted ten neighborhood associations and met with each group that responded to us, as well as several other community groups and advocacy organizations. Throughout the investigation, we relied on two police chiefs who accompanied us to Ferguson and who themselves interviewed City and police officials, spoke with community members, and reviewed FPD policies and incident reports.

We thank the City officials and the rank-and-file officers who have cooperated with this investigation and provided us with insights into the operation of the police department, including the municipal court. Notwithstanding our findings about Ferguson's approach to law enforcement and the policing culture it creates, we found many Ferguson police officers and other City employees to be dedicated public servants striving each day to perform their duties lawfully and with respect for all members of the Ferguson community. The importance of their often-selfless work cannot be overstated.

We are also grateful to the many members of the Ferguson community who have met with us to share their experiences. It became clear during our many conversations with Ferguson residents from throughout the City that many residents, black and white, genuinely embrace Ferguson's diversity and want to reemerge from the events of recent months a truly inclusive, united community. This Report is intended to strengthen those efforts by recognizing the harms caused by Ferguson's law enforcement practices so that those harms can be better understood and overcome.

respect to speeding charges brought by FPD, the evidence shows not only that African Americans are represented at disproportionately high rates overall, but also that the disparate impact of FPD's enforcement practices on African Americans is 48% larger when citations are issued not on the basis of radar or laser, but by some other method, such as the officer's own visual assessment.

These disparities are also present in FPD's use of force. Nearly 50% of documented force used by FPD officers was used against African Americans. In every canine bite incident for which racial information is available, the person bitten was African American.

Municipal court practices likewise cause disproportionate harm to African Americans. African Americans are 68% less likely than others to have their cases dismissed by the court, and are more likely to have their cases last longer and result in more required court encounters. African Americans are at least 50% more likely to have their cases lead to an arrest warrant, and accounted for 92% of cases in which an arrest warrant was issued by the Ferguson Municipal Court in 2015. Available data show that, of those actually arrested by FPD only because of an outstanding municipal warrant, 96% are African American.

Our investigation indicates that this disproportionate burden on African Americans cannot be explained by any difference in the rate at which people of different races violate the law. Rather, our investigation has revealed that these disparities occur, at least in part, because of unlawful bias against and stereotypes about African Americans. We have found substantial evidence of racial bias among police and court staff in Ferguson. For example, we discovered emails circulated by police supervisors and court staff that stereotype racial minorities as criminals, including one email that joked about an abortion by an African-American woman being a means of crime control.

City officials have frequently asserted that the harsh and disparate results of Ferguson's law enforcement system do not indicate problems with police or court practices, but instead reflect a pervasive lack of "personal responsibility" among "certain segments" of the community. Our investigation has found that the practices about which area residents have complained are in fact unconstitutional and unduly harsh. But the City's personal-responsibility refrain is telling: it reflects many of the same racial stereotypes found in the emails between police and court supervisors. This evidence of bias and stereotyping, together with evidence that Ferguson has long recognized but failed to correct the consistent racial disparities caused by its police and court practices, demonstrates that the discriminatory effects of Ferguson's conduct are driven at least in part by discriminatory intent in violation of the Fourteenth Amendment.

Community Distrust

Since the August 2014 shooting death of Michael Brown, the lack of trust between the Ferguson Police Department and a significant portion of Ferguson's residents, especially African Americans, has become undeniable. The causes of this distrust and division, however, have been the subject of debate. Police and other City officials, as well as some Ferguson residents, have insisted to us that the public outcry is attributable to "outside agitators" who do not reflect the opinions of "real Ferguson residents." That view is at odds with the facts we have gathered during our investigation. Our investigation has shown that distrust of the Ferguson Police Department is longstanding and largely attributable to Ferguson's approach to law enforcement. This approach results in patterns of unnecessarily aggressive and at times unlawful policing.

Miracle of the Black Leg

Pictorial representations of the physician-saints Cosmas and Damian and the myth of the miracle transplant—black donor, white recipient—date back to the mid-fourteenth century, appearing much later than written versions of the story.

1.
Always, the dark body hewn asunder; always
 one man is healed, his sick limb replaced,
placed in another man's grave: the white leg
 buried beside the corpse, or attached as if
it were always there. If not for the dark appendage,
 you might miss the story beneath this story—
what remains each time the myth changes: how,
 in one version, the doctors harvest the leg
from a man, four days dead, in his tomb at the church
 of a martyr, or—in another—desecrate a body
fresh in the graveyard at Saint Peter in Chains:
 there was buried just today an Ethiopian.
Even now, it stays with us: when we mean to uncover
 the truth, we dig, say: *unearth.*

2.
Emblematic in paint, signifier of the body's lacuna,
 the black leg is at once a grafted narrative,
a redacted line of text, and in this scene a dark stocking
 pulled above the knee. Here the patient is sleeping,
his head at rest in his hand. Beatific, he looks as if
 he'll wake from a dream. On the floor
beside the bed, a dead *Moor*—hands crossed at the groin,
 the swapped limb pocked and rotting, fused in place.
And in the corner, a question: poised as if to speak
 the syntax of sloughing, a snake's curved form.
It emerges from the mouth of a boy like a tongue—slippery
 and rooted in the body as knowledge. For centuries
this is how the myth repeats: the miracle—in words
 or wood or paint—is a record of thought.

3.
See how the story changes: in one painting
the *Ethiop* is merely a body, featureless in a coffin,
so black he has no face. In another, the patient—
at the top of the frame—seems to writhe in pain,
the black leg grafted to his thigh. Below him
a mirror of suffering: the *blackamoor*—
his body a fragment—arched across the doctor's lap
as if dying from his wound. If not immanence,
the soul's bright anchor—blood passed from one
to the other, what knowledge haunts each body,
what history, what phantom ache? One man always
low, in a grave or on the ground, the other
up high, closer to heaven; one man always diseased,
the other a body in service, plundered.

4.
Both men are alive in Villoldo's carving.
In twinned relief, they hold the same posture,
the same pained face, each man reaching to touch
his right leg. The black man, on the floor,
holds his stump. Above him, the doctor restrains
the patient's arm as if to prevent him touching
the dark amendment of flesh. How not to see it—
the men bound one to the other, symbiotic—
one man rendered expendable, the other worthy
of this sacrifice? In version after version, even
when the *Ethiopian* isn't there, the leg is a stand-in,
a black modifier against the white body,
a piece cut off—as in origin of the word *comma*:
caesura in a story that's still being written.

—Natasha Tretheway

do so by state law, it collects no reliable or consistent data regarding pedestrian stops, even though it has the technology to do so.⁴⁵ In Ferguson, officers will sometimes make an arrest without writing a report or even obtaining an incident number, and hundreds of reports can pile up for months without supervisors reviewing them. Officers' uses of force frequently go unreported, and are reviewed only rarely when reviewed at all. As a result of these deficient practices, stops, arrests, and uses of force that violate the law or FPD policy are rarely detected and often ignored when they are discovered.

1. FPD Engages in a Pattern of Unconstitutional Stops and Arrests in Violation of the Fourth Amendment

FPD's approach to law enforcement has led officers to conduct stops and arrests that violate the Constitution. We identified several elements to this pattern of misconduct. Frequently, officers stop people without reasonable suspicion or arrest them without probable cause. Officers rely heavily on the municipal "Failure to Comply" charge, which appears to be facially unconstitutional in part, and is frequently abused in practice. FPD also relies on a system of officer-generated arrest orders called "warrants" that circumvents the warrant system and poses a significant risk of abuse. The data show, moreover, that FPD misconduct in the area of stops and arrests disproportionately impacts African Americans.

a. FPD Officers Frequently Detain People Without Reasonable Suspicion and Arrest People Without Probable Cause

The Fourth Amendment protects individuals from unreasonable searches and seizures. Generally, a search or seizure is unreasonable "in the absence of individualized suspicion of wrongdoing." *City of Indianapolis v. Edmond*, 561 U.S. 62, 67 (2000). "The Fourth Amendment permits law enforcement officers to briefly detain individuals for investigative purposes if the officers possess reasonable suspicion that criminal activity is afoot." *Terry v. Ohio*, 392 U.S. 1, 21 (1968). Reasonable suspicion exists when an "officer is aware of particularized, objective facts which, taken together with rational inferences from those facts, reasonably warrant suspicion that a crime is being committed." *United States v. Grimes*, 765 F.3c 937, 939 (8th Cir. 2014) (internal quotation marks omitted). In addition, if the officer reasonably believes the person with whom he or she is dealing is armed and dangerous, the officer may conduct a protective search or frisk of the person's outer clothing. *United States v. Carter*, 701 F.3c 544, 547 (8th Cir. 2012). Such a search is not justified on the basis of "inchoate and unparticularized suspicion," rather, the "issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Id.* (quoting *Terry*, 392 U.S. at 27). For an arrest to constitute a reasonable seizure under the Fourth Amendment, it must be supported by probable cause, which exists only if "the totality of facts based on reasonably trustworthy information would justify a prudent person in believing the individual arrested had

⁴⁵ FPD policy states that "officers should document" all field contacts and field investigations "relevant to criminal activity and identification of criminal suspects on the appropriate Department approved computer entry forms." FPD General Order 421.06. Policy requires that a "Field Investigation Report" be completed for persons and vehicles "in all instances when an officer feels" that the subject "may be in the area for a questionable or suspicious purpose." FPD General Order 422.01. In practice, however, FPD officers do not reliably document field contacts, particularly of pedestrians, and the Department does not evaluate such field contacts.

committed an offense at the time of the arrest." *Stoner v. Wallington*, 755 F.3d 799, 806 (5th Cir. 2015).

Under Missouri law, when making an arrest, "[t]he officer must inform the defendant by what authority he acts, and must also show the warrant if required." Mo. Rev. Stat. § 544.180. In reviewing SPD records, we found numerous incidents in which—based on the officer's own description of the detention—an officer detained an individual without articulable reasonable suspicion of criminal activity or arrested a person without probable cause. In none of these cases did the officer explain or justify his conduct.

For example, in July 2015, police encountered an African-American man in a parking lot while on their way to arrest someone else at an apartment building. Police knew that the encountered man was not the person they had come to arrest. Nonetheless, without even reasonable suspicion, they handcuffed the man, placed him in the back of a patrol car, and ran his record. It turned out he was the intended arrestee's landlord. The landlord went on to help the police enter the person's unit to effect the arrest, but he later filed a complaint alleging racial discrimination and unlawful detention. Ignoring the central fact that they had handcuffed a man and put him in a police car despite having no reason to believe he had done anything wrong, a sergeant vigorously defended SPD's actions, characterizing the detention as "minimal" and pointing out that the car was air conditioned. Even temporary detention, however, constitutes a deprivation of liberty and must be justified under the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809-10 (1996).

Many of the unlawful stops we found appear to have been driven, in part, by an officer's desire to check whether the subject had a municipal arrest warrant pending. Several incidents suggest that officers are more concerned with issuing citations and generating charges than with addressing community needs. In October 2012, police officers pulled over an African-American man who had lived in Ferguson for 16 years, claiming that his passenger-side brake light was broken. The driver happened to have replaced the light recently and knew it to be functioning properly. Nonetheless, according to the man's written complaint, one officer stated, "let's see how many tickets you're going to get," while a second officer tapped his Electronic Control Weapon ("ECW") on the roof of the man's car. The officers wrote the man a citation for "tail light/reflector/license plate light out." They refused to let the man show them that his car's equipment was in order, warning him, "don't you get out of that car until you get to your house." The man, who believed he had been racially profiled, was so upset that he went to the police station that night to show a sergeant that his brakes and license plate light worked.

At times, the constitutional violations are even more blatant. An African-American man recounted to us an experience he had while sitting at a bus stop near Canfield Drive. According to the man, an SPD patrol car abruptly pulled up in front of him. The officer inside, a patrol lieutenant, rolled down his window and addressed the man:

Lieutenant: Get over here.
Bus Patron: Me?
Lieutenant: Get the f--- over here. Yeah, you.
Bus Patron: Why? What did I do?

(noting that the state court had failed to adequately determine, as required by *Bearden*, whether the defendant had “made sufficient bona fide efforts legally to acquire the resources to pay,” but nonetheless denying habeas relief because the defendant’s failure to pay was due not to indigency but his “willful refusal to pay”).

The Ferguson court, however, has in the past routinely issued arrest warrants when a person is unable to make a required fine payment without any ability-to-pay determination. While the court does not *sentence* a defendant to jail in such a case, the result is often equivalent to what *Bearden* proscribes: the incarceration of a defendant solely because of an inability to pay a fine. In response to concerns about issuing warrants in such cases, Ferguson officials have told us that, without issuing warrants and threatening incarceration, they have no ability to secure payment. But the Supreme Court rejected that argument, finding that states are “not powerless to enforce judgments against those financially unable to pay a fine,” and noting that—especially in cases like those at issue here in which the court has already made a determination that penological interests do *not* demand incarceration—a court can “establish a reduced fine or alternate public service in lieu of a fine that adequately serves the state’s goals of punishment and deterrence, given the defendant’s diminished financial resources.”³² *Id.* As discussed above, however, Ferguson has not established any such alternative.³³

Finally, in light of the significant portion of municipal charges that lead to an arrest warrant, as well as the substantial number of arrest warrants that lead to arrest and detention, we have considerable concerns regarding whether individuals facing charges in Ferguson municipal court are entitled to, and being unlawfully denied, the right to counsel.

d. Ferguson’s Bond Practices Impose Undue Hardship on Those Seeking to Secure Release from the Ferguson City Jail

Our investigation found substantial deficiencies in the way Ferguson police and court officials set, accept, refund, and forfeit bond payments. Recently, in response to concerns raised during our investigation, the City implemented several changes to its bond practices, most of which apply to those detained after a warrantless arrest.³⁴ These changes represent positive

³² Ferguson officials have also told us that the arrest warrant is issued not because of the missed payment per se, but rather because the person missing the payment failed to abide by the court’s rules. But the Supreme Court has rejected that contention, too. In *Bearden*, the Court noted that the sentencing court’s stated concern “was that the petitioner had disobeyed a prior court order to pay the fine,” but found that the sentence nonetheless “is no more than imprisoning a person solely because he lacks funds” to pay. *Bearden*, 461 U.S. at 574.

³³ Additionally, Ferguson’s municipal code provides: “When a sentence for violation of any provision of this Code or other ordinance of the city . . . includes a fine and such fine is not paid, or if the costs of prosecution adjudged against an offender are not paid, the person, under sentence shall be imprisoned one day for every ten dollars (\$10.00) of any such unpaid fine or costs . . . not to exceed a total of four (4) months.” Ferguson Mun. Code § 1-16. Our investigation did not uncover any evidence that the court has sentenced anyone to imprisonment pursuant to this statute in the past several years. Nonetheless, it is concerning that this statute, which unconstitutionally sanctions imprisonment for failing to pay a fine, remains in effect. *Cf. Bearden v. Georgia*, 451 U.S. 660, 671 (1983).

³⁴ In December 2014, the court set forth a bond schedule for warrantless arrests, which provides that, for all but 14 code violations, a person arrested pursuant to a municipal code violation and brought to Ferguson City Jail shall be issued a citation or summons and released on his or her own recognizance without any bond payment required. For those 14 code violations requiring a bond, the court has set “fixed” bond amounts, although these are subject to the court’s discretion to raise or lower those amounts at the request of the City or the detained individual. The court’s

fine to avoid bond forfeiture, he or she must pay in person and provide photo identification. Yet, where the underlying fine is less than the bond amount—a common occurrence—the City does not immediately refund the difference to the individual. Rather, pursuant to a directive issued by the current City Finance Director approximately four years ago, bond refunds *cannot* be made in person, and instead must be sent via mail. According to Ferguson's Court Clerk, it is not entirely uncommon for these refund checks to be returned as undeliverable and become "unclaimed property."

C. Ferguson Law Enforcement Practices Disproportionately Harm Ferguson's African-American Residents and Are Driven in Part by Racial Bias

Ferguson's police and municipal court practices disproportionately harm African Americans. Further, our investigation found substantial evidence that this harm stems in part from intentional discrimination in violation of the Constitution.

African Americans experience disparate impact in nearly every aspect of Ferguson's law enforcement system. Despite making up 67% of the population, African Americans accounted for 85% of FPD's traffic stops, 96% of FPD's citations, and 96% of FPD's arrests from 2012 to 2014. Other statistical disparities, set forth in detail below, show that in Ferguson:

- African Americans are 2.07 times more likely to be searched during a vehicular stop but are 26% less likely to have contraband found on them during a search. They are 2.00 times more likely to receive a citation and 2.37 times more likely to be arrested following a vehicular stop.
- African Americans have force used against them at disproportionately high rates, accounting for 88% of all cases from 2010 to August 2014 in which an FPD officer reported using force. In all 14 uses of force involving a canine bite for which we have information about the race of the person bitten, the person was African American.
- African Americans are more likely to receive multiple citations during a single incident, receiving four or more citations on 75 occasions between October 2012 and July 2014, whereas non-African Americans received four or more citations only twice during that period.
- African Americans account for 95% of Manner of Walking charges; 94% of all Fail to Comply charges; 92% of all Resisting Arrest charges; 92% of all Peace Disturbance charges; and 89% of all Failure to Obey charges.³⁸
- African Americans are 58% less likely than others to have their cases dismissed by the Municipal Judge, and in 2013 African Americans accounted for 92% of cases in which an arrest warrant was issued.

³⁸ As noted above, FPD charges violations of Municipal Code Section 29-16 as both Failure to Obey and Failure to Comply. Court dock carries forward this inconsistency.