
RECENT EVENT

CRIMINAL LAW — CAMPUS POLICING — UNIVERSITY POLICE OFFICER SHOOTS AND KILLS NON-UNIVERSITY-AFFILIATED MOTORIST DURING OFF-CAMPUS TRAFFIC STOP. — The Shooting of Samuel DuBose.

In many ways, the shooting of Samuel DuBose appears to fit an all-too-familiar pattern of police violence.¹ On the evening of July 19, 2015, in Cincinnati, Ohio, Officer Raymond Tensing — who is white — stopped DuBose — who was black — for a minor moving violation.² After DuBose was unable to produce his driver's license, Tensing directed him to remove his seatbelt and tried to open DuBose's driver's side car door.³ "I didn't even do nothing," DuBose protested, as he held his door closed and turned the key to his car's ignition.⁴ Yelling for DuBose to stop, Tensing reached for him with one hand and his service weapon with the other. He then fired one shot — killing DuBose instantly.⁵ Although Tensing claimed that he discharged his weapon only after being dragged by DuBose's vehicle,⁶ his body camera footage plainly contradicted his account.⁷ In announcing Tensing's indictment for murder, the county prosecutor condemned the officer's actions as "asinine," adding: "It's an absolute tragedy in 2015 that anyone would behave in this manner. . . . [Tensing] lost his temper because Mr. DuBose wouldn't get out of his car quick enough."⁸

There are any number of narratives that might be spun from DuBose's killing. However, one especially notable aspect of this particular instance of police violence is that Tensing was an officer of the University of Cincinnati (UC) Police Department — yet he pulled

¹ See, e.g., Richard Pérez-Peña, *Fatal Police Shootings: Accounts Since Ferguson*, N.Y. TIMES (Apr. 8, 2015), <http://www.nytimes.com/interactive/2015/04/08/us/fatal-police-shooting-accounts.html>.

² See Eric Weibel, Univ. of Cincinnati Police Div., Information Report, Case No. 201502732, at 1, 3 (July 20, 2015) [hereinafter Police Report], <http://www.uc.edu/content/dam/uc/ucomm/docs/incident-report.pdf> [<http://perma.cc/QCZ8-U2ZH>] (indicating that Tensing pulled over DuBose due to a missing front license plate).

³ See Sharon Coolidge et al., *Prosecutor: UC Officer "Purposefully Killed" DuBose*, CIN. ENQUIRER (July 30, 2015, 12:57 PM), <http://www.cincinnati.com/story/news/2015/07/29/publish/30830777> [<http://perma.cc/K3CV-LMU4>].

⁴ See *id.*

⁵ See *id.*

⁶ See Police Report, *supra* note 2, at 1–2.

⁷ See Coolidge et al., *supra* note 3.

⁸ Scott Eric Kaufman, "This Is, Without Question, a Murder": Prosecutor Indicts "Asinine" White Cop in Shooting Death of Unarmed Black Motorist, SALON (July 29, 2015, 2:08 PM), http://salon.com/2015/07/29/this_is_without_question_a_murder [<http://perma.cc/A77D-TF2D>].

DuBose over on a public street several blocks south of UC's campus.⁹ DuBose was neither affiliated with the university, nor suspected of committing a crime on university property or against a university-affiliated individual.¹⁰ That he was nonetheless stopped, seized, shot, and killed by a UC police officer casts new light upon the increasing role that colleges and universities play in policing the public at large. Although campus police departments have come to take on many of the characteristics of traditional police forces, they remain troublingly insulated from democratic control and public oversight.

How DuBose found himself on the other end of a campus police officer's gun warrants further explanation. While campus police departments have existed for well over a century, they initially served a largely "custodial" function.¹¹ But as colleges and universities began experiencing rapid growth in the mid-twentieth-century — and as instances of student unrest began occurring with greater frequency — school administrators increasingly sought to recast campus police departments in the mold of their municipal counterparts.¹²

To that end, state legislatures, as well as state and local police departments, proved to be willing facilitators.¹³ By the turn of the millennium, most states had passed laws authorizing campus "policing" in some form.¹⁴ Ohio, for example, not only permits private and public

⁹ Compare Police Report, *supra* note 2, at 1 (indicating that DuBose was stopped near the intersection of Vine Street and Thill Street), with ROBIN S. ENGEL ET AL., UNIV. OF CINCINNATI CAMPUS CRIME REDUCTION COMM., 2014 CAMPUS CRIME REPORT 14 fig.1 (2015), http://uc.edu/content/dam/uc/publicsafety/docs/2014%20Campus%20Crime%20Report_FINAL.pdf [<http://perma.cc/854J-KU98>] (showing that the intersection of Vine and Thill is beyond the university's "Clery Timely Warning Area," which the university defines as "a zone with a high concentration of students," *id.* at 14). Notably, UC's "Clery Timely Warning Area" constitutes "a larger geographic area than the area identified for mandatory crime reporting" by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) (2012). ENGEL ET AL., *supra*, at 14.

¹⁰ See Police Report, *supra* note 2 (making no mention of a connection between DuBose and UC).

¹¹ See John J. Sloan, *The Modern Campus Police: An Analysis of Their Evolution, Structure, and Function*, 11 AM. J. POLICE, no. 2, at 85, 86–87 (1992).

¹² See *id.* at 87–88; see also Clifford D. Shearing & Philip C. Stenning, *Private Security: Implications for Social Control*, 30 SOC. PROBS. 493, 496 (1983) (offering the university campus as an example of "mass private property": "huge, privately owned facilities" with largely public functions). Concern over liability for campus crimes may have also contributed to this shift. See Max L. Bromley, *Policing Our Campuses: A National Review of Statutes*, 15 AM. J. POLICE, no. 3, at 1, 2 (1996).

¹³ See Jamie P. Hopkins & Kristina Neff, *Jurisdictional Confusion that Rivals Erie: The Jurisdictional Limits of Campus Police*, 75 MONT. L. REV. 123, 129 (2014) ("[S]tate and private educational institutions cannot merely establish campus police offices with full police power and authority on their own initiative; it must be granted through some type of state authority.").

¹⁴ See *id.* (citing Bromley, *supra* note 12, at 5); SEYMOUR GELBER, NAT'L INST. OF LAW ENF'T & CRIMINAL JUSTICE, U.S. DEP'T OF JUSTICE, *THE ROLE OF CAMPUS SECURITY IN THE COLLEGE SETTING* 35 (1972), <http://www.ncjrs.gov/pdffiles1/Digitization/8966NCJRS>

colleges and universities to “appoint” or “designate” campus police officers, but also vests those officers with full law enforcement power.¹⁵ In states where no such laws exist — or for officers of private institutions not covered by state law¹⁶ — state or local law enforcement agencies commonly deputize campus police officers, thereby “enabling the [campus] police to exercise state police powers.”¹⁷

Today, it is customary for colleges and universities to be patrolled by campus officers who are nearly indistinguishable from municipal officers in both appearance and practice.¹⁸ Student activism may no longer pose the same threat to the higher education establishment that it once did,¹⁹ but both federal law and market forces have increased awareness (and, arguably, concerns) about campus safety.²⁰ And in

.pdf [http://perma.cc/VZ86-9NY4] (noting that many “states permit the state governing body for higher education to appoint campus police officers with power to arrest”).

¹⁵ See OHIO REV. CODE ANN. § 1713.50(C) (LexisNexis 2015) (vesting private campus police officers with “the same powers and authority that are vested in a police officer of a municipal corporation or a county sheriff”); OHIO REV. CODE ANN. § 3345.04(B) (LexisNexis 2013) (authorizing “state university law enforcement officers” to, *inter alia*, “serve as peace officers”).

¹⁶ Whereas a few states make no distinction between officers at private rather than public institutions, *see* Hopkins & Neff, *supra* note 13, at 132 (observing that for the purpose of its campus police law, Georgia defines “college or university” as “an accredited, nonproprietary, *public or private* educational institution of higher learning” (emphasis added) (quoting GA. CODE ANN. § 20-8-1(3) (2010))), the majority of states grant authority solely to public institutions or otherwise make this distinction more clear, *see id.* at 132–33.

¹⁷ *Id.* at 130 n.53; *see also* Jeffrey S. Jacobson, *The Model Campus Police Jurisdiction Act: Toward Broader Jurisdiction for University Police*, 29 COLUM. J.L. & SOC. PROBS. 39, 65–69 (1995) (“After completing all training requirements for municipal police in Connecticut, and after approval by the New Haven Board of Police Commissioners, Yale officers receive badges and shield numbers identifying them as *New Haven* (not Yale) police.” *Id.* at 65.).

¹⁸ As of the 2011–12 academic year, nearly two-thirds of four-year colleges and universities with 2500 or more students employed sworn and armed officers. *See* BRIAN A. REAVES, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, CAMPUS LAW ENFORCEMENT, 2011–12, at 2 tbl.2 (2015), <http://www.bjs.gov/content/pub/pdf/cle1112.pdf> [http://perma.cc/3BQC-K29C]. Although a significantly higher percentage of public institutions employ such officers, a substantial portion of private institutions do the same. *See id.* (indicating that 91% of surveyed public institutions and 30% of surveyed private institutions employed sworn and armed officers).

¹⁹ This is not to say that campus administrators no longer task campus police officers with responding to student unrest. *See, e.g.*, CRUZ REYNOSO ET AL., UC DAVIS NOVEMBER 18, 2011 “PEPPER SPRAY INCIDENT” TASK FORCE REPORT 11 (2012), <http://ahed.assembly.ca.gov/sites/ahed.assembly.ca.gov/files/hearings/1.%20Reynoso%20Task%20Force%20Report.pdf> [http://perma.cc/4AST-R267] (finding it “difficult to avoid the conclusion” that university leaders’ “analysis of alternatives to the immediate deployment of the [campus] police [to disband the Occupy UC Davis campsite]” was “inconsistent and incomplete”).

²⁰ For example, the Clery Act, 20 U.S.C. § 1092(f) (2012), requires academic institutions to compile and report “[s]tatistics concerning the occurrence [of certain crimes] on campus, in or on noncampus buildings or property, and on *public property*,” *id.* § 1092(f)(1)(F) (emphasis added). *U.S. News & World Report* now publishes this data in its directory of colleges and universities. *See* Robert Morse & Diane Tolis, *U.S. News Publishes College Crime Statistics, Loan Default Data*, U.S. NEWS & WORLD REP.: MORSE CODE (Sept. 9, 2014, 8:00 AM), <http://www.usnews.com/education/blogs/college-rankings-blog/2014/09/09/us-news-publishes-college-crime-statistics-loan-default-data> [http://perma.cc/RA2Y-HBED].

this era of recurring mass shootings, armed campus police departments are often seen as necessary elements of the quasi municipalities that many colleges and universities have become.²¹

But as the legal powers of campus police departments have grown, so too has their physical jurisdiction. To be sure, some campus police departments continue to operate with what has been described as “limited jurisdiction,” which “provide[s] campus police officers with jurisdiction [solely] on property or facilities that are owned or operated by the college or university.”²² However, an increasing number of campus police departments enjoy some form of “extended jurisdiction,” which may provide (1) “jurisdiction over defined public roads or spaces that adjoin campus, in addition to the jurisdiction provided by limited jurisdiction statutes”;²³ (2) “the ability to apprehend those who commit offenses on campus and subsequently flee beyond the campus police officer’s jurisdiction”;²⁴ or (3) “‘concurrent jurisdiction’ with other police departments in a designated area agreed upon by the departments.”²⁵

This typology helps to explain why Tensing was authorized to pull DuBose over at all. Although Ohio law grants campus officers jurisdiction only over campus property, it also allows municipalities to agree to share their jurisdiction with campus police departments.²⁶ Accordingly, pursuant to “a mutual aid agreement between UC and surrounding police departments, . . . UC police officers may take law enforcement action in the relevant surrounding communities.”²⁷ The UC and Cincinnati Police Departments have also collaborated on de-

²¹ See, e.g., Tim White, *URI President: Mass Shootings Elsewhere Prompted Changes with Campus Cops*, WPRI (Sept. 17, 2015, 4:40 PM), <http://wpri.com/2015/07/24/uri> [<http://perma.cc/8E4B-S9G7>] (“The president of the University of Rhode Island said it was the concern over mass shootings . . . that prompted him to push for arming campus police.”); see also Motoko Rich, *After One Campus Is Attacked, the Others Adapt*, N.Y. TIMES (Oct. 6, 2015), <http://www.nytimes.com/2015/10/07/us/campus-security-teams-try-to-learn-from-each-new-attack.html>.

²² Hopkins & Neff, *supra* note 13, at 134.

²³ *Id.* at 136.

²⁴ *Id.*

²⁵ *Id.* at 137. In rare cases, the relevant state statute does not explicitly cabin the jurisdiction of campus police officers, see *id.* at 135 (citing WYO. STAT. ANN. §§ 7-2-101(a)(iv), -102 (2011)), but such jurisdiction may nonetheless be “confined” by common law, see *Marshall v. State ex rel. Dep’t of Transp.*, 941 P.2d 42, 45 (Wyo. 1997).

²⁶ See OHIO REV. CODE ANN. § 1713.50(C) (LexisNexis 2015) (“The board of trustees of a private college or university may enter into an agreement with any political subdivision pursuant to which the members of the campus police department of the college or university may exercise within that political subdivision, but *outside the property of the college or university*, the powers and authority granted to them” (emphasis added)); OHIO REV. CODE ANN. § 3345.041(A) (LexisNexis 2013) (authorizing public colleges and universities to enter into similar agreements).

²⁷ UNIV. OF CINCINNATI, 2014 ANNUAL SECURITY & FIRE SAFETY REPORT 1, http://uc.edu/content/dam/uc/righttoknow/docs/Campus%20Safety%20Report%202014_May4%20Updated.pdf [<http://perma.cc/ND4P-T7UR>].

vising and implementing “a strategic additional patrol . . . plan” for the neighborhoods surrounding the UC campus.²⁸

The shooting of Samuel DuBose thus brings into sharper relief the intermediate space in which campus police departments operate. They are not private security forces, endowed as they often are with jurisdiction over public streets. Nor are they full-fledged police departments, insofar as they function outside of the same legal, regulatory, and political sphere as their state and municipal counterparts. The result is an uneven system of policing marked by a lack of democratic accountability and institutional transparency. DuBose’s killing not only highlights these inconsistencies, but also urges their resolution.

The grant of extended jurisdiction to campus police departments is ostensibly rooted in the notion that putting more officers on the street should increase the safety of both campus affiliates *and* nonaffiliates.²⁹ Yet more policing is not necessarily the same thing as more safety. After all, the alleged violation for which DuBose was pulled over — failure to display a front license plate — is only nominally related to safety. And because the police have as much power to inflict violence upon communities as they do to keep them safe,³⁰ state and municipal police departments are subject, at least in theory, to a host of external controls. The need for such controls seems to be even greater in the context of campus policing: because the primary constituency of campus police departments remains the campus community,³¹ campus police officers may be prone to protect and serve some individuals while disproportionately policing others.³²

²⁸ ENGEL ET AL., *supra* note 9, at 15; *see also id.* at 15–18, 17 fig.2.

²⁹ *See, e.g., id.* at 15–18; *see also* Jacobson, *supra* note 17, at 53.

³⁰ *See, e.g.,* Pérez-Peña, *supra* note 1.

³¹ *Cf.* Elizabeth E. Joh, *The Paradox of Private Policing*, 95 J. CRIM. L. & CRIMINOLOGY 49, 62 (2004) (“A client-driven mandate is perhaps the most central characteristic of private policing.”); David Alan Sklansky, *Private Police and Democracy*, 43 AM. CRIM. L. REV. 89, 98 (2006) (“[P]rivate security firms focus . . . on the interests of the people who hire them.”).

³² *See*, Jacobson, *supra* note 17, at 51 (recognizing the “concern . . . that university police will demonstrate a response-time preference for those residents of the *university precinct* who are university affiliates over those who are not”); *cf.* Sklansky, *supra* note 31, at 99 (“[P]rivatization can make policing less egalitarian in two ways: by reducing the demand for public policing officially committed to protecting everyone, and by reducing the political pressure on public police forces to comply with norms of due process and dignity. The result may be a two-tiered system of policing worrisomely congruent with broader patterns of social hierarchy.”). Notably, during the first seven months of 2015, UC police officers stopped, cited, and arrested black motorists at significantly disproportionately higher rates than white motorists. *See* ROBIN S. ENGEL & MURAT OZER, UNIV. OF CINCINNATI INST. OF CRIME SCI., UNIVERSITY OF CINCINNATI POLICE DEPARTMENT TRAFFIC STOP SUMMARY 3 (2015), <https://www.uc.edu/content/dam/uc/ucomm/docs/ucpd-arrests-and-citations.pdf> [<https://perma.cc/EJ33-M562>]. Of course, campus affiliates may also be subject to uneven policing. *See, e.g.,* Hannah K. Gold, *Why Does a Campus Police Department Have Jurisdiction over 65,000 Chicago Residents?*, VICE (Nov. 12, 2014), <http://vice.com/read/why-does-a-campus-police-department-have-jurisdiction-over-65000-chicago-residents>

Nevertheless, campus police departments tend not to be governed in the same ways as state and municipal departments. Whereas the chiefs of traditional police departments are typically no more than once removed from elected officials,³³ the chiefs of private campus police departments are accountable to campus administrators,³⁴ who are in turn accountable to university trustees.³⁵ None are directly beholden to a public electorate,³⁶ and major decisions affecting the policing of private citizens are sometimes made in the face of local elected officials' vocal opposition.³⁷ Even the leaders of public campus police departments are typically at least twice removed from elected officials, insofar as they are appointed by university leaders who are they themselves appointed.³⁸

Moreover, although campus police departments often play a considerable role in a city's overall policing scheme, they are not always subject to the same level of legal and regulatory scrutiny as their municipal partners. For example, the Cincinnati Police Department has been required to enact mandatory reforms as a result of class action litigation and a Department of Justice investigation.³⁹ These reforms in-

-1112 [<http://perma.cc/D5LE-8V3Q>] ("Students of color frequently told . . . stories of being stopped by [campus police] and asked for their ID.").

³³ For example, Cincinnati's police chief is accountable to the city manager, *see* CINCINNATI, OHIO, ADMIN. CODE art. IV, § 2 (2015), who is in turn appointed by the mayor, *see* CINCINNATI, OHIO, CITY CHARTER art. III, § 2 (2015).

³⁴ *See, e.g.*, XAVIER UNIV., DIVISION OF FINANCIAL ADMINISTRATION, VICE PRESIDENT FOR BUSINESS SERVICES AND RISK MANAGEMENT (2015), <http://xavier.edu/financial-administration/documents/VPforBusinessServicesRiskManagement9-9-15.pdf> [<http://perma.cc/RS29-WMQ7>] (showing that the Chief of Police of Xavier University, a private university based in Cincinnati, is directly accountable to Xavier's Vice President for Business Services and Risk Management).

³⁵ *See, e.g.*, XAVIER UNIV., XAVIER UNIVERSITY ORGANIZATION CHART (2015), <http://www.xavier.edu/employees/documents/basicorganization2015-16.pdf> [<http://perma.cc/P9CQ-PDJS>] (showing that Xavier's Vice President for Business Services and Risk Management is ultimately accountable to Xavier's Board of Trustees).

³⁶ *See* Jacobson, *supra* note 17, at 51 ("[S]ince university police are not directly accountable to elected officials, residents may have no direct means to redress grievances against campus officers.").

³⁷ *See* Anne Wootton, *Arming Draws Little Fire from College Hill*, BROWN DAILY HERALD (Jan. 26, 2006), <http://www.browndailyherald.com/2006/01/26/arming> [<http://perma.cc/L5ZG-PD7S>] ("The announcement to arm [Brown University police officers with guns] prompted the strongest objection from Providence Mayor David Cicilline '83 and Ward 1 City Councilman David Segal.").

³⁸ *See, e.g.*, OHIO REV. CODE ANN. § 3361.01 (LexisNexis 2013) (indicating that the UC Board of Trustees is "appointed by the governor with the advice and consent of the senate"); *id.* § 3361.03 (authorizing the Board of Trustees to "employ . . . and remove the president . . . and other employees").

³⁹ *See* Collaborative Settlement Agreement, *In re Cincinnati Policing*, No. C-1-99-317 (S.D. Ohio Aug. 5, 2002); Memorandum of Agreement Between the U.S. Dep't of Justice and the City of Cincinnati, Ohio and the Cincinnati Police Dep't (Apr. 12, 2002), <http://www.cincinnati-oh.gov/police/linkservid/EA1A2Coo-DCB5-4212-8628197B6C923141/showMeta/o> [<http://perma>

clude the implementation of a civilian complaint review board⁴⁰ and “community problem oriented policing.”⁴¹ The UC Police Department, on the other hand, has been bound by no similar edicts.⁴²

The operations of many campus police departments also remain relatively opaque, even to their own constituents.⁴³ This phenomenon is exacerbated by the fact that in most states, open records laws do not apply to private campus police forces.⁴⁴ Further, campus police departments’ complaint processes tend to be far less robust than those of municipal departments. A growing number of cities — albeit often only after prolonged citizen organizing⁴⁵ — have convened civilian agencies to review complaints levied against municipal police officers.⁴⁶ In contrast, not only do campus police departments typically handle complaints in house, but they also provide far less information about how to file complaints and what happens to complaints once they are filed.⁴⁷

.cc/X6E4-SY4N]; see also David A. Graham, *How One Campus Cop Undid a City’s Police Reforms*, THE ATLANTIC (July 30, 2015), <http://www.theatlantic.com/politics/archive/2015/07/samuel-dubose-local-police/399977> [http://perma.cc/73C3-4JM].

⁴⁰ See Collaborative Settlement Agreement, *supra* note 39, at 18–24.

⁴¹ See *id.* at 4–10. Community problem-oriented policing “prioritizes fixing underlying problems over arresting people and hauling them in.” Graham, *supra* note 39.

⁴² See Graham, *supra* note 39.

⁴³ See, e.g., *Harvard Crimson, Inc. v. President & Fellows of Harvard Coll.*, 840 N.E.2d 518, 520 (Mass. 2006) (noting that whereas two local municipal police departments complied with the records request of a university’s student newspaper, the university police department did not).

⁴⁴ See, e.g., *ESPN, Inc. v. Univ. of Notre Dame Sec. Police Dep’t*, No. 71DO7-1501-MI-00017, slip op. at 4, 6, 11 (Ind. Super. Ct. Apr. 20, 2015) (declining to sever a private university’s police department from the university as a whole, and thereby concluding that the police department did not constitute a “public agency” as contemplated by the state public record law); *Harvard Crimson*, 840 N.E.2d at 521 (holding that the university’s police department was not subject to the state’s open records law); see also Jake New, *Unsealing Police Records*, INSIDE HIGHER ED (May 22, 2015), <http://www.insidehighered.com/news/2015/05/22/rulings-mixed-recent-lawsuits-over-police-records-private-colleges> [http://perma.cc/YW6H-EQEN] (noting that only a handful of states subject private campus police departments to open records laws). Ohio is one of the few locales where private campus police departments are subject to an open records requirement. See *State ex rel. Schiffbauer v. Banaszak*, 33 N.E.3d 52, 53 (Ohio 2015).

⁴⁵ See, e.g., *About CCRB — History*, NYC, <http://www.nyc.gov/html/ccrb/html/about/history.shtml> [http://perma.cc/W8XB-Y858] (describing the numerous public battles waged over the creation, composition, and practices of New York City’s Civilian Complaint Review Board).

⁴⁶ See, e.g., N.Y. CITY CHARTER § 440 (2010).

⁴⁷ For example, the UC Department of Public Safety’s website makes no express mention of a complaint process. Instead, the department solicits “[f]eedback” through UC’s generic “UC is Listening” portal. *Contact*, U. CIN. DEPARTMENT PUB. SAFETY, <http://www.uc.edu/publicsafety/contact.html> [http://perma.cc/9QLW-YZ2U]. The City of Cincinnati, on the other hand, provides detailed information about filing a complaint directly with the Cincinnati Police Department or with the city’s Civilian Complaint Authority Board. See, *Complaint About Police*, CITY CIN., <http://www.cincinnati-oh.gov/police/contact-us/complaint-about-police> [http://perma.cc/L8MX-8YXX]; *Citizen Complaint Investigative & Hearing Process*, CITY CIN., <http://www.cincinnati-oh.gov/ccia/citizen-complaint-authority/citizen-complaint-investigative-hearing-process> [http://perma.cc/RC4X-296N]; *Flow Chart*, CITY CIN., http://www.cincinnati-oh.gov/ccia/assets/File/flow_chart.pdf [http://perma.cc/YWH3-8BVY] (explaining the Civilian Complaint Authority and the citizen complaint resolution process).

To be sure, neither civilian complaint review boards⁴⁸ nor the police departments⁴⁹ that they oversee are perfect. The point, however, is that the proliferation of such basic transparency measures in the context of municipal policing has far outpaced that in campus policing.⁵⁰

Because the structural contours of campus policing bear heavily on whether Tensing might have sought to engage DuBose differently, or whether he would have had the authority to stop DuBose in the first place, the shooting of Samuel DuBose underscores the need to reassess universities' push into public policing.⁵¹ As an initial matter, states, municipalities, and academic institutions should revisit the terms of their jurisdictional agreements, with an eye toward reining in the extended jurisdiction that many campus police departments presently enjoy.⁵²

Government actors should also move to hold campus police departments to the same basic standards of accountability and transparency as state and municipal departments. In the vast majority of states where private campus police departments are authorized to police the public yet are exempt from open records laws, legislators should seek to address this inconsistency.⁵³ States and municipalities should also

⁴⁸ See, e.g., *Catapano-Fox v. City of New York*, No. 14 Civ. 8036(KPF), 2015 WL 3630725, at *2 (S.D.N.Y. June 11, 2015) (noting the allegations of a former New York City Civilian Complaint Review Board member that the board chair had “attempt[ed] to have the CCRB stop accepting or substantiating ‘stop and frisk’ complaints” and “fail[ed] ‘to conduct himself in an “impartial” and “independent” manner with regard to challenging the NYPD’ on a number of incidents”).

⁴⁹ See, e.g., Sklansky, *supra* note 31, at 101 (“[T]he commitment of public law enforcement agencies to values like fairness, equal treatment, and so forth has often been notoriously weak.”).

⁵⁰ One notable exception is the University of California, Berkeley's Police Review Board, which was created in 1990 “to administer citizen complaints against the sworn members of the University of California Police Department and to monitor and review departmental policies and procedures.” *Police Review Board*, U.C. BERKELEY, <http://vcf.berkeley.edu/police-review> [<http://perma.cc/C4PQ-PJGA>]. The board “consists of UC faculty, students, and staff, as well as a retired police officer and a member of the off-campus community.” *Id.* The University of Chicago also maintains an “Independent Review Committee” for its police force, although its membership is dictated entirely by the university provost. See UNIV. OF CHI., THE INDEPENDENT REVIEW COMMITTEE FOR THE UNIVERSITY OF CHICAGO POLICE DEPARTMENT 2 (2013), http://d3qioqp55mx5f5.cloudfront.net/safety-security/uploads/files/IRC_Charge_August_2013.pdf [<http://perma.cc/J7TE-RHF8>].

⁵¹ To be sure, there is an argument to be made for doing away with sworn campus police departments altogether. See, e.g., *Transcript of Deters' Press Conference*, CIN. ENQUIRER (July 29, 2015, 9:33 PM), <http://www.cincinnati.com/story/news/2015/07/29/transcript-deters-press-conference/30856359> [<http://perma.cc/CHJ2-B9P2>] (“[UC] does a great job educating people, . . . and that should be their job. Being police officers shouldn't be the role of this university.”).

⁵² Notably, in the wake of DuBose's death, the Cincinnati City Council voted to “limit the traffic enforcement jurisdiction of University of Cincinnati law enforcement personnel to the boundaries of the University of Cincinnati campus” while the city “reviews its mutual aid agreement[]” with the university. See Cincinnati, Ohio, Ordinance 264-2015 § 1 (Aug. 5, 2015).

⁵³ Recent legislative developments suggest that this effort has already begun. See, e.g., S.B. 308, 84th Leg., Reg. Sess. (Tex. 2015) (to be codified at TEX. EDUC. CODE § 51.212) (specifying that the campus police departments of private colleges and universities are, for the purpose of the

mandate that campus police departments implement enhanced internal measures for increased transparency, such as clear and accessible complaint processes that provide for direct civilian oversight. And, where the Department of Justice or some other government entity sees fit to intervene in state or municipal policing, it should also consider whether campus police departments — to the extent that they share jurisdiction with state or municipal departments — should be included within the scope of its intervention as well.

Finally, colleges and universities that wish to retain their broad powers to police the public should consider how they might align their police departments more closely with their stated missions as *academic* institutions. Doing so may help to justify why, beyond their obvious interest in “protecting” the safety of their constituents, colleges and universities should be engaged in public policing. One fairly obvious step that schools could take in this direction is to integrate academic research activities into their police departments’ everyday operations. Campus police departments are uniquely positioned to act as incubators for better policing practices and policies⁵⁴: There is no shortage of academic experts whose disciplines are relevant to policing — whether they be criminal law and procedure, sociology, or education.⁵⁵ Many academic institutions are buoyed by plentiful economic resources that

state’s open government law, considered “governmental bod[ies] . . . with respect to information relating solely to law enforcement activities”); *see also* Drew Joseph, *Bill Hopes to Make College Police Departments More Transparent*, SAN ANTONIO EXPRESS-NEWS (Jan. 26, 2015, 5:03 PM), http://www.expressnews.com/news/politics/texas_legislature/article/Bill-hopes-to-make-police-departments-at-private-6020890.php (noting that the Texas bill was introduced shortly after two high-profile incidents of violence committed by private campus police officers). Although opponents of such legislation suggest that subjecting private campus police departments to open records requirements “may have a ‘chilling effect’ on students’ willingness to go to campus police with information,” Shawn Musgrave, *Bill Seeks to Make Police Records at Private Colleges Public*, BOS. GLOBE (Sep. 28, 2015), <http://www.bostonglobe.com/metro/2015/09/27/police-reports-private-colleges-shielded-from-public-view/hzst5gCJhYoIOuAwbopGaK/story.html> [<http://perma.cc/3VM7-XUCN>], it is unclear why this concern is so acute in the private educational context such that private schools should continue to be exempt from open records laws while public schools are not.

⁵⁴ A useful analogy may be the original conception of charter schools, as advanced by former teachers union leader Albert Shanker and others, as incubators of curricular and pedagogical innovation rather than as replacements for traditional public schools. *See, e.g.*, Richard D. Kahlenberg & Halley Potter, Opinion, *The Original Charter School Vision*, N.Y. TIMES (Aug. 30, 2014), <http://nytimes.com/2014/08/31/opinion/sunday/albert-shanker-the-original-charter-school-visionary.html>.

⁵⁵ UC already houses the Institute of Crime Science (ICS), “a think tank bridging research and practice that fosters the use of best practices across the criminal justice system through the application of research and knowledge to issues of crime control, administration, and public safety.” *About*, U. CIN. INST. CRIME SCI., <http://www.uc.edu/ics/about.html> [<http://perma.cc/9C23-NE2B>]. To that end, ICS researchers sit alongside Cincinnati and UC police officers on UC’s Campus Crime Reduction Committee. *See* ENGEL ET AL., *supra* note 9, at 12. However, that committee appears to be wholly focused on “reducing crime” rather than on improving the quality of policing. *See id.*

rival those of some municipalities.⁵⁶ And some campus police departments have already taken the lead in exploring measures for better policing in ways that municipal departments have not.⁵⁷

There is normative value inherent in how we respond to the questions raised by DuBose's death: What does it mean to be the police? Who gets to police whom? And what does it say about the value of particular lives where, as here, individuals are policed by institutions to which they do not belong, in which they are significantly underrepresented,⁵⁸ and to which they have no meaningful democratic recourse? The shooting of Samuel DuBose suggests that the answer to this last question is that some lives *do* matter more. Yet it is precisely this sort of distinction that one would think colleges and universities — apt as they often are to emphasize their commitment to racial diversity⁵⁹ — would be eager to avoid drawing.

⁵⁶ Compare, e.g., UNIV. OF CINCINNATI, 2014 FINANCIAL STATEMENTS 11, <http://www.uc.edu/content/dam/uc/af/controller/docs/AuditedFinancialReport2014.pdf> [<http://perma.cc/P3JC-LQPL>] (showing a total net position of \$1.7 billion), and *id.* at 13 (showing that UC's endowment is approaching \$1.2 billion), with REGINALD E. ZENO ET AL., CITY OF CINCINNATI, 2014 COMPREHENSIVE ANNUAL FINANCIAL REPORT 40, <http://www.cincinnati-oh.gov/finance/cafr/2014-comprehensive-annual-financial-report> (showing a total net position of \$1.9 billion).

⁵⁷ Although the merits of police-worn body cameras are certainly debatable, see, e.g., *Developments in the Law — Policing*, 128 HARV. L. REV. 1706, 1794–817 (2015), Tensing might have escaped indictment had he not been wearing a body camera — which would likely have been the case had he been a member of the Cincinnati Police Department, compare Michele Ralston, *FAQ: University of Cincinnati Police*, U. CIN. (Aug. 2, 2015, 12:00 AM), <http://www.uc.edu/news/NR.aspx?id=22004> [<http://perma.cc/UWK4-LA5Z>] (describing UC's "widespread use of body cameras" as "a proactive step to ensure transparency in support of patrolling beyond . . . campus borders"), with Emily Wood & Ben Petracco, *Body Cameras Use Examined After Former UC Officer's Indictment*, WLWT (July 30, 2015, 12:00 AM), <http://wlwt.com/news/use-of-body-cameras-is-examined-after-indictment-of-uc-police-officer/34426470> [<http://perma.cc/QM2H-GGKY>] (noting that the Cincinnati Police Department has initiated only a pilot program for body camera use).

⁵⁸ Although recent estimates place Cincinnati's population at 44.8% black, and Ohio's at 12.2% black, *Cincinnati (City) QuickFacts*, U.S. CENSUS BUREAU (Oct. 14, 2015, 4:30 PM), <http://quickfacts.census.gov/qfd/states/39/3915000.html> [<http://perma.cc/37RE-5BNQ>], black students comprise only 8.4% of the UC student body, *UC Facts*, U. CIN., <https://www.uc.edu/about/ucfactsheet.html> [<https://perma.cc/JK2Y-U2G8>].

⁵⁹ See, e.g., Brief for Brown Univ. et al. as Amici Curiae Supporting Respondents at 11–12, *Fisher v. Univ. of Tex.*, No. 14-981 (U.S. Nov. 2, 2015) ("To say that race continues to matter [in the context of higher education] is to acknowledge forthrightly that, for many reasons — including the ubiquitous persistence of segregated schools and communities — race continues to shape the backgrounds, perspectives, and experiences of many in our society . . .").