Interrogating Police Officers

Stephen Rushin & Atticus DeProspo***

Abstract

This Article empirically evaluates the procedural protections given to police officers facing disciplinary interrogations about alleged misconduct. It demonstrates that state laws and collective bargaining agreements have insulated many police officers from the most successful interrogation techniques.

The first part of this Article builds on previous studies by analyzing a dataset of police union contracts and state laws that govern the working conditions in a substantial cross section of large and midsized American police departments. Many of these police departments provide officers with hours or even days of advanced notice before a disciplinary interrogation. An even larger percentage of these police departments require internal investigators to provide officers with copies of incriminating evidence before any interrogation. These protections exist in departments of all sizes, regardless of geographical location.

The second part of this Article relies on a national survey of American law enforcement leaders to evaluate whether these regulations frustrate officer accountability efforts. The overwhelming majority of the survey respondents claimed that these interrogation regulations substantially burden legitimate investigations into officer behavior. Virtually all survey respondents agreed that these protections do little to reduce the likelihood of false confessions.

Combined, this data paints a troubling picture of the internal procedures used to investigate and respond to officer misconduct. This data suggests that states and municipalities have given police officers procedural protections designed to thwart internal investigations, thereby limiting officer accountability. This Article concludes by offering normative recommendations on how communities can reform interrogations of police officers so as to balance the community interest in accountability with officers' interests in due process.

Table of Contents

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Introduction

On April 12, 2015, Baltimore police arrested a 25-year-old man named Freddie Gray for allegedly possessing an illegal knife.[1] Police and eye witnesses disagreed on the circumstances leading up to Mr. Gray's arrest. The charging document filed by local law enforcement claimed that Mr. Gray "fled unprovoked upon noticing police presence," resulting in a brief pursuit and "arrest[] without force or incident."[2] But according to other witnesses at the scene, the arrest was

1 Investigators later determined that Mr. Gray's knife was, in fact, legal under local law. Joshua Barajas, *Freddie Gray's Death Ruled a Homicide*, PBS News Hour (May 1, 2015, 11:13 AM), https://www.pbs.org/newshour/nation/freddie-grays-death-ruled-homicide [https://perma.cc/25HP-RDA5].

2 Eyder Peralta, *Timeline: What We Know About the Freddie Gray Arrest*, NPR (May 1,

anything but ordinary. As one eye witness recounted, officers restrained Mr. Gray by bending his legs backward, causing him to "scream[] for his life."[3] Video from the scene at least partially corroborates the eye witness account, as it shows Mr. Gray screaming in pain as officers took him into custody.[4] At the time that officers put Mr. Gray into the back of a police transport van, officers claimed he was "talking and breathing,"[5] even though one eye witness said Mr. Gray's legs appeared broken.[6]

Despite the seemingly inconsistent accounts of Mr. Gray's arrest, all parties agree that police officers placed Mr. Gray in the back of a police transport van around 8:42 AM.[7] About 45 minutes later, Mr. Gray arrived at a local police station unconscious and in "serious medical distress."[8] At some point, Mr. Gray suffered a severe spinal cord injury and a crushed voice box caused by "forceful trauma."[9] Mr. Gray fell into a coma before dying a week later.[10]

In the days that followed, Baltimore officials placed all six officers involved in Mr. Gray's death on paid leave pending the completion of an internal investigation.[11] Early on, there were more questions than answers. Were the officer statements contained in the charging document truthful? Did officers use any force in arresting Mr. Gray? And what happened in the back of the transport vehicle that could have fatally injured Mr. Gray?

2015, 8:23 PM), https://www.npr.org/sections/thetwo-way/2015/05/01/403629104/baltimore-protests-what-we-know-about-the-freddie-gray-arrest [https://perma.cc/SC7J-L4U5].

3 Kevin Rector, *The 45-minute Mystery of Freddie Gray's Death*, BALT. SUN (Apr. 25, 2015, 6:15 PM), http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-gray-ticker-20150425-story.html [https://perma.cc/D55P-HTY7] (describing the account of an eye witness).

4 CNN, *New Video Shows Arrest of Freddie Gray in Baltimore*, YOUTUBE (Apr. 21, 2015), https://www.youtube.com/watch?v=7YV0EtkWyno [https://perma.cc/T3HW-DPJ3].

5 Doug Donovan & Mark Puente, *Freddie Gray Not the First to Come out of Baltimore Police Van with Serious Injuries*, BALT. SUN (Apr. 23, 2015, 7:47 PM), http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-gray-rough-rides-20150423-story.html [https://perma.cc/D9P2-QA2T].

6 Rector, *supra* note 3.

7 *Id.*

8 *Id.*

9 Scott Dance, *Freddie Gray's Spinal Injury Suggests 'Forceful Trauma,' Doctors Say*, BALT. SUN (Apr. 21, 2015), http://www.baltimoresun.com/health/bs-hs-gray-injuries-20150420-story.html [https://perma.cc/MJR3-VYVH].

10 Rector, *supra* note 3.

11 Justin Fenton & Justin George, *Five Officers in Freddie Gray Case Gave Accounts of Incident*, BALT. SUN (Apr. 23, 2015, 10:30 AM), http://www.baltimoresun.com/news/maryland/crime/bs-md-freddie-gray-mayor-comments-20150422-story.html [https://perma.cc/2PQC-XXBG].

Unraveling these questions in the absence of significant physical evidence proved challenging for investigators. Were these civilians rather than police officers involved in Mr. Gray's death, there is little doubt what would happen next: investigators would begin interrogating those involved in Mr. Gray's death. As one of the nation's leading interrogation manuals explains, in cases where "physical clues are entirely absent," the "only" method for uncovering the truth is the "interrogation of the criminal suspect himself, as well as of others who may possess significant information."[12] These interrogations commonly involve "psychological tactics" including the use of deception.[13] As a number of legal scholars have observed, the law gives police officers wide discretion in the kinds of interrogation tactics they can use against civilians.[14]

But these were police officers, not civilians, involved in Mr. Gray's death. Any investigator in Maryland attempting to interrogate a police officer suspected of professional misconduct faces significant procedural hurdles.[15] Under Maryland's Law Enforcement Officer Bill of Rights, internal investigators must give officers 10 days of notice before conducting an interrogation.[16] If investigators fail to abide by this 10-day waiting period, any statement made by the officer during an interrogation may be inadmissible in future disciplinary or termination proceedings.[17] Supporters of the Maryland law claim that it gives officers valuable time to rest before an interrogation, thereby improving the ability of officers to recall events accurately.[18] But critics argue that the Maryland waiting period hampers internal investiga-

12 Fred E. Inbau, John E. Reid, Joseph P. Buckley & Brian C. Jayne, Criminal Interrogation and Confessions xi (5th ed. 2013).

13 *Id.*

14 *See infra* Sections I.A–.B.

15 *See* Md. Code Ann., Pub. Safety § 3-104 (LexisNexis 2011).

16 Md. Code Ann., Pub. Safety § 3-104(j)(2)(i)–(ii), (n) (LexisNexis 2011). Additionally, it is important to clarify that to the extent investigators believe an officer may have committed a crime, that officer is entitled to all constitutionally required protections. That is, the officer as a criminal suspect undergoing a custodial interrogation has a right to remain silent, the right to an attorney, and the right to end an interrogation. This Article deals specifically with disciplinary interrogations—those used by internal investigators to decide whether an officer should face disciplinary sanctions, including suspension or termination, for a violation of departmental policies.

17 *See* Md. Code Ann., Pub. Safety § 3-104(a) (LexisNexis 2011) (stating that any time a police department is investigating an officer for misconduct and the investigation may lead to punitive action, these protections shall apply).

18 *Examining Police Practices and Use of Force: Briefing Before the U.S. Comm'n on Civil Rights* 52–53 (2015), https://www.usccr.gov/calendar/trnscrpt/Police-Practices-and-Use-of-Force_04-20-2015.pdf [https://perma.cc/KU7D-MK7Y] (testimony of Sean Smoot, Police Benevolent & Protective Association of Illinois) (arguing that "the research shows and the science

tions by allowing police officers to coordinate stories in a manner that deflects blame.[19]

Baltimore is far from the only city to provide officers with these kinds of protections during internal investigations. Civil rights advocates have criticized similar provisions across the country that grant police officers substantially more protections than civilians when undergoing interrogations.[20] Many of these provisions go even further than the Maryland law. As various media outlets have observed, some state laws or collective bargaining agreements also provide officers with access to incriminating evidence before an interrogation,[21] regulate the length of officer interrogations,[22] restrict the number of investigators that can be present during an interrogation,[23] and strictly limit the ways that investigators can question officers.[24]

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shows that [officers] can get . . . tunnel vision" during stressful situations, and a delay of 48 hours or more helps officers better remember the incident as memories "come back to them").

19 Samuel Walker, Police Union Contract "Waiting Periods" for Misconduct Investigations Not Supported by Scientific Evidence (July 1, 2015) (unpublished manuscript) (http://samuelwalker.net/wp-content/uploads/2015/06/48HourSciencepdf.pdf [https://perma.cc/QF9R-RYEJ]) (providing a detailed critique of these kinds of claims by Smoot and others). Additionally, according to Baltimore Mayor Stephanie Rawlings-Blake, this state law makes it difficult for investigators in Baltimore to "fully engage" with officers accused of misconduct. Liz Fields, *Police Officer 'Bill of Rights' Blamed for Baltimore's Information Blackout in Case of Freddie Gray's Severed Spine*, VICE NEWS (April 22, 2015), https://news.vice.com/article/police-officer-bill-of-rights-blamed-for-baltimores-information-blackout-in-case-of-freddie-grays-severed-spine [https://perma.cc/8HYW-ST6Q].

20 *See, e.g.*, Eli Hager, *Blue Shield*, MARSHALL PROJECT (Apr. 27, 2015, 12:06 PM), https://www.themarshallproject.org/2015/04/27/blue-shield [https://perma.cc/E3Z9-85UR] (critiquing law enforcement officer bills of rights as giving police officers "special treatment" during investigations).

21 *See, e.g.*, FLA. STAT. § 112.532(1)(d) (2018) (providing officers in Florida with access to virtually all evidence against them before an interrogation).

22 *See, e.g.*, CITY OF MUNCIE, AGREEMENT BETWEEN FOP LODGE #87 AND THE CITY OF MUNCIE § 41.01(D) (2009), http://www.cityofmuncie.com/upload/assets/db_Documents/fop.pdf [https://perma.cc/M4WF-TV6T] (providing a two-hour limit on the length of interrogations of police officers).

23 *See, e.g.*, CITY OF LAS CRUCES, AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND FRATERNAL ORDER OF POLICE, LAS CRUCES POLICE OFFICER'S ASSOCIATION § 32(D)(4) (2013) (on file with author) (limiting the number of interrogators to two).

24 *See, e.g.*, CITY OF OVIEDO, COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF OVIEDO AND THE COASTAL FLORIDA POLICE BENEVOLENT ASSOCIATION, INC., CERTIFICATION NUMBER 1465 AND CERTIFICATION NUMBER 1653, Art. 7 § 2(F)–(H) (2018), http://sire.cityofoviedo.net/sirepub/agdocs.aspx?doctype=minutes&itemid=12451 [https://perma.cc/2DWF-HN8M] (follow "Exhibit 1" hyperlink) (preventing interrogators from using abusive, offensive, or threatening language, barring promises, rewards, or threats, requiring the recording of interrogations, and limiting the asking of questions that have been previously answered by the officer in a prior statement).

While legal scholars have extensively examined how the law regulates the interrogation of criminal suspects,[25] a far smaller body of literature has considered interrogations of police officers suspected of professional misconduct. This Article conducts a comprehensive evaluation of the procedural protections afforded to police officers facing disciplinary interrogations across a large cross section of American police departments.

The first Part of this Article analyzes a dataset of 657 police union contracts and 20 law enforcement officer bills of rights ("LEOBRs") that govern the internal disciplinary procedures of a substantial portion of police officers in the United States. While many of these jurisdictions have reasonable regulations in place to prevent coercive or abusive tactics, a significant number of departments provide officers with interrogation protections that may frustrate accountability efforts. Around 21% of agencies in our dataset delay disciplinary interrogations of police officers after possible misconduct.[26] The typical contract affords officers around 48 hours of notice before they must undergo interrogations about suspected misconduct.[27] Approximately 28% of agencies in our dataset require internal investigators to turn over potentially incriminating evidence to officers before questioning may begin, including copies of civilian complaints, the name of complainants, video evidence, audio evidence, and GPS locational data.[28] These protections exist in a substantial number of police departments across the country regardless of department size, location, or demographic characteristics.[29]

The second Part of this Article considers whether these kinds of restrictions on officer interrogations impair the ability of internal investigators to hold officers accountable for misconduct.[30] To do this, we conducted a national survey of American law enforcement leaders. We sent 550 surveys to municipal law enforcement leaders across 48 states. The survey instrument asked officers whether they believed that these kinds of protections—specifically, waiting periods and prior access to incriminating evidence before an interrogation—may "burden an investigation," or otherwise "limit the ability of interrogators

25 *See infra* Section I.A.

26 *See infra* Part IV–Section IV.A.

27 *Infra* Section IV.A. Section IV.A directly states that the median jurisdiction delays interrogations for around 48 hours.

28 *See infra* Part IV.

29 *See infra* Section III.B; *see also infra* Part IV.

30 *See infra* Part II.

to uncover the truth" during an interrogation.[31] Additionally, we asked whether police leaders believed that these kinds of protections may be useful in reducing the possibility of false confessions, and we provided an opportunity for officers to give written feedback.[32]

Each survey question merely asked respondents about a hypothetical limitation on the ability of an "interrogator" to interrogate a "suspect."[33] Predictably, as demonstrated by their written replies, many of the survey respondents envisioned these limits applying to civilian interrogations, rather than interrogations of police officers suspected of misconduct.[34] Responses were almost uniformly consistent. Nearly all of the 156 survey respondents claimed that waiting periods and prior access to incriminating evidence would limit the effectiveness of any interrogation.[35] More than 97% of survey respondents claimed that these provisions would either "occasionally" or "frequently" burden investigations.[36] Additionally, the overwhelming majority of survey respondents claimed that these kinds of protections were unnecessary to protect against false confessions.[37] Further, a large number of officers expressed outrage in supplemental written feedback, with many suggesting that these limitations would severely hamper the effectiveness of interrogations.[38]

Combined, this data paints a troubling picture of the internal procedures used to investigate and respond to officer misconduct. These data strongly suggest that many police officers across the country have successfully obtained protections against coercive interrogation techniques during internal investigations that most officers would view as unacceptably burdensome if applied to civilian interrogations. This finding has important implications for the study of police accountability and criminal procedure. It suggests that labor and employment

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31 *Infra* Appendix B.

32 *Infra* Appendix B.

33 For the complete survey instrument, see *infra* Appendix B.

34 Perhaps no survey response better illustrates this than one respondent who provided the following qualitative feedback: "Why are 'advocates' constantly protecting criminals and hindering justice for victims[?]" Survey Response from Police Chief #56 (July 18, 2018) (on file with author).

35 *See infra* Section IV.C.

36 *Infra* Section IV.C (showing that around 142 of the respondents found that a delay period would occasionally or frequently burden investigations, while around 140 of the respondents felt that prior access to evidence would similarly burden investigations).

37 *See* Survey Response from Police Chief #1–156 (on file with author) (showing that 151 of the 156 respondents who answered this question claimed that these protections are not necessary to protect those facing interrogations).

38 *See infra* Section IV.C.

protections have effectively insulated many officers from accountability. This Article concludes by offering normative recommendations on how communities can reform interrogations of police officers to balance the community interest in accountability with officers' interests in due process during internal investigations.

This Article proceeds in five parts. Part I situates this paper's contribution within the growing literature on the internal disciplinary procedures in American police departments. Part II discusses the existing literature on the interrogation of police officers. Part III breaks down the methodology used in this Article. Part IV presents the results of our study, and Part V offers some normative recommendations for reforming interrogations of police officers.

I. Internal Investigations and Police Accountability

Internal investigations are critically important in holding police officers accountable for misconduct. In order to determine whether a police officer's behavior has violated the law, the Constitution, or internal departmental policies, police departments must generally conduct an internal investigation. This is because, as prior scholars have observed, police officers often investigate their fellow officers in cases of alleged misconduct or criminal acts.[39] Internal departmental investigations determine whether an officer will face disciplinary penalties, including suspension or termination.[40] These internal investigations can also determine whether an officer will be subject to criminal prosecution.[41] Thus, any examination of police accountability must consider the process by which police departments investigate their own officers.

While internal investigators increasingly rely on body-worn camera footage,[42] dash camera footage,[43] and civilian cell phone videos,[44]

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39 *See* Sean F. Kelly, *Internal Affairs: Issues for Small Police Departments*, FBI L. Enforcement Bull., July 2003, at 1 (describing how police departments, specifically smaller agencies, handle the responsibilities of investigating officers suspected of misconduct).

40 *See generally* Kate Levine, *Discipline and Policing*, 68 Duke L.J. 839 (2019) (providing a detailed accounting of the operation of internal investigations and discipline, examining the kinds of punishments that officers can receive for various infractions, and problematizing the traditional narrative surrounding police discipline).

41 *See* John V. Jacobi, *Prosecuting Police Misconduct*, 2000 Wis. L. Rev. 789, 804 (citing a California law that generally provides that "investigations of police misconduct are [to be] conducted by the Internal Affairs Division of the suspect officer's own department").

42 *See* Seth W. Stoughton, *Police Body-Worn Cameras*, 96 N.C. L. Rev. 1363, 1371–78 (2018) (discussing the development of police videos, including in-car and body-worn cameras).

43 *See id.*

44 *See generally* Jocelyn Simonson, *Copwatching*, 104 Cal. L. Rev. 391, 408, 414 (2016)

investigators also must often interrogate police officers in order to uncover the truth. Interrogations of civilians in criminal cases are a common and thoroughly researched phenomenon. Social scientists have found that investigators frequently employ sophisticated and psychologically coercive tactics[45] to elicit incriminating statements from civilians during custodial interrogations.[46] Investigators have been able to accomplish this in the context of civilian interrogations, in part, because courts and legislators grant investigators wide latitude to use any interrogation tactics that do not undermine the voluntariness of a statement made by a criminal suspect. By contrast, a complex web of labor and employment regulations prevent internal investigators from using many of these same tactics against police officers suspected of misconduct or unlawful behavior.

This Part evaluates the constitutional and legal regulation of police and civilian interrogations. Section A discusses the constitutional floor placed on interrogations of civilian and police suspects. Section B then considers how states and localities have installed heightened protections for police officers during interrogations. These heightened protections flow from several sources, including local collective bargaining agreements,[47] LEOBRs,[48] and civil service statutes.[49] This has

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(discussing how civilians have organized in many American cities to videotape law enforcement officers).

45 Richard A. Leo, *Inside the Interrogation Room*, 86 J. CRIM. L. & CRIMINOLOGY 266, 277–78 (1996) (finding that, in his observation of 182 interrogations, officers typically employed 5 or more interrogation tactics, including appealing to a suspect's self-interest, confronting the suspect with evidence, identifying contradictions in the suspect's story, and occasionally yelling or attempting to confuse the suspect).

46 *Id.* at 280 (finding that investigators successfully elicited incriminating statements, partial confessions, or full confessions in 117 of the 182 interrogations that Professor Leo observed).

47 *See* Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191, 1203–07 (2017) [hereinafter Rushin, *Police Union Contracts*] (describing the evolution of collective bargaining in the context of American policing and internal disciplinary procedures).

48 Law Enforcement Officers' Bills of Rights ("LEOBRs") generally provide police officers with protections during internal disciplinary investigations. *See, e.g.*, Kevin M. Keenan & Samuel Walker, *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers' Bills of Rights*, 14 B.U. PUB. INT. L.J. 185, 185 (2005). One analysis from 2015 found that there were 14 states that have LEOBRs (depending on the definition of LEOBR). *See* Hager, *supra* note 20. *See generally* FBI, FULL-TIME LAW ENFORCEMENT EMPLOYEES BY STATE (2015), https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-77 [https://perma.cc/NUS5-F5H8] (highlights the number of law enforcement officers employed in each state).

49 There are several states that have civil service statutes that apply to local police officers. *See, e.g.*, ARIZ. REV. STAT. ANN. §§ 38-1001, 1007 (1956) (creates a civil service system for police officers); TEX. LOC. GOV'T CODE ANN. §§ 143.001–143.403 (West 2008) (creates a civil service system for police officers and fire department personnel). These civil service systems developed the regulation of appointing and discharging public employees, which include police officers. *See*

resulted in a sort of "distributive inequality"[50] between the interrogation protections afforded to civilians and police officers undergoing similarly coercive interrogation conditions.

A. *Constitutional Limits on Interrogations of Criminal Suspects and Disciplinary Interrogations of Employees*

While the U.S. Supreme Court has placed some limits on the interrogation tactics that investigators can use in criminal cases,[51] scholars have widely criticized these regulations as "narrow and weak."[52] In *Miranda v. Arizona*,[53] the Court famously held that the Fifth Amendment's privilege against self-incrimination requires police officers to notify suspects of four prophylactic warnings before beginning a custodial interrogation: (1) the right to remain silent, (2) notification that anything a suspect says may be used against him in court, (3) the right to have an attorney present during the interrogation, and (4) notification that if a suspect cannot afford an attorney, one will be appointed free of charge.[54] These protections only apply to formal, or "custodial" interrogations.[55] But social scientists have shown that suspects frequently waive their protections under *Miranda*.[56]

In cases where suspects have waived their protections under *Miranda*, social scientists have found that police engage in a wide range of psychologically manipulative tactics in order to elicit incriminating statements.[57] Criminal suspects have attempted to challenge the use of these tactics, but with little success. To determine whether an interrogation tactic is unconstitutionally coercive, the Court has adopted a "totality of the circumstances" test,[58] which asks whether a confession

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Ann C. Hodges, *The Interplay of Civil Service Law and Collective Bargaining Law in Public Sector Employee Discipline Cases*, 32 B.C. L. Rev. 95, 102–03 (1990).

50 Kate Levine, *Police Suspects*, 116 Colum. L. Rev. 1197, 1197 (2016).

51 *See generally* Yale Kamisar et al., Modern Criminal Procedure (14th ed. 2015) (describing the historical development of constitutional law that regulates police interrogations).

52 Kate Levine & Stephen Rushin, *Interrogation Parity*, 2018 U. Ill. L. Rev. 1685, 1691.

53 384 U.S. 436 (1966).

54 *Id.* at 471; Richard A. Leo, *The Impact of* Miranda *Revisited*, 86 J. Crim. L. & Criminology 621, 628 (1996).

55 *See* Rhode Island v. Innis, 446 U.S. 291, 301 (1980) (holding that an "interrogation" only happens when police expressly question a suspect or engage in equivalent conduct).

56 *See* Leo, *supra* note 45, at 276 (showing that 78% of the individuals observed by Professor Leo waived their protections under *Miranda*).

57 *See id.* at 277 (describing the frequency of interrogation techniques used in Leo's observations of police interrogations).

58 Schneckloth v. Bustamonte, 412 U.S. 218, 224–25 (1973) (asking courts to balance the need for law enforcement effectiveness and the societal value of ensuring suspects voluntarily and freely confess).

was "voluntary."[59] Some tactics, like the use of physical force, clearly implicate the voluntariness of a statement made during an interrogation.[60] Nevertheless, courts have found confessions to be voluntary in many other questionable circumstances, including when the confession was the apparent product of "economic duress, lengthy interrogations, sleep deprivation combined with middle-of-the-night questioning, refusal to allow basic physical necessities, lies about the severity of charges or evidence in the case, threats to family members' welfare, [and] inducements in the form of leniency or other promises . . . ."[61] While these represent the most extreme examples of permissible interrogation techniques, modern police training materials widely teach detectives to use subtle psychological techniques and deception to elicit incriminating statements from criminal suspects.[62]

Of course, interrogations are not just used in criminal investigations. When an employer suspects that an employee has engaged in misconduct (either criminal misconduct or violations of internal policies), an employer may attempt to question that employee as part of an internal investigation. In the context of police departments, internal investigators commonly use these sorts of administrative interrogations to judge the veracity of civilian complaints, collect facts after officer uses of force, and investigate apparent officer misconduct. The Court has placed some limits on how internal investigators conduct these interrogations of police officers. Although they cannot compel criminal suspects, investigators can, and often do, compel officers to answer questions during disciplinary interrogations. Failure to answer a supervisor's question can result in an officer's termination for cause. Nevertheless, such compelled questioning can raise serious Fifth Amendment concerns when an officer is suspected of criminal conduct that may serve as the basis of *both* internal disciplinary action and criminal prosecution. In such cases, the Court has held that the government may not use a compelled statement by a police officer as evidence in a criminal prosecution of that officer.[63] But outside of this

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59 Brown v. Mississippi, 297 U.S. 278, 285-87 (1936) (establishing the "voluntariness" doctrine under the due process clause of the Fourteenth Amendment to determine whether confessions are admissible based on a totality of the circumstances, which most importantly includes the conduct of the police during interrogation).

60 *See* Leo, *supra* note 54, at 625.

61 Levine & Rushin, *supra* note 52, at 1693 (quoting Levine, *supra* note 50, at 1215–16).

62 *See, e.g.*, Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891, 910, 918–19 (2004) (citing the Inbau et al. textbook on interrogations).

63 Garrity v. New Jersey, 385 U.S. 493, 500 (1967) (holding that "protection . . . against coerced statements prohibits use in subsequent criminal proceedings of statements obtained

constitutional limitation, employers are free to compel officers to undergo interrogations as part of internal investigations, subject to limitations placed on these interrogations by labor and employment laws. The next Section explores these labor and employment limits on interrogations of police officers.

B. Regulations of Disciplinary Interrogations of Police Officers

Both local collective bargaining agreements and state laws limit the tactics that can be used against police officers facing interrogations related to disciplinary investigations. First, police union contracts often regulate disciplinary interrogations. According to the most recent counts, approximately two-thirds of American police officers work for police departments that authorize collective bargaining.[64] The overwhelming majority of American states permit or require the unionization of police officers,[65] and most state statutes on the topic allow officers to bargain collectively about "matters of wages, hours, and other terms and conditions of employment . . . ."[66] Courts and

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under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic").

64 More specifically, about 66 percent of police officers work for police departments that take part in collective bargaining negotiations. BRIAN A. REAVES, U.S. DEP'T OF JUSTICE, LOCAL POLICE DEPARTMENTS, 2007, at 13 (rev. ed. 2011), http://bjs.gov/content/pub/pdf/lpd07.pdf [https://perma.cc/EFB8-TMSJ].

65 *See generally* MILLA SANES & JOHN SCHMITT, CTR. FOR ECON. AND POLICY RESEARCH, REGULATION OF PUBLIC SECTOR COLLECTIVE BARGAINING IN THE STATES 5, 12–68 (2014), http://cepr.net/documents/state-public-cb-2014-03.pdf [https://perma.cc/Q5DA-EERU]. Most states permit or require municipalities to bargain collectively with police unions. Forty-one states and the District of Columbia have statutes that require or permit police departments at the local level to bargain collectively with police unions about various employment terms and conditions. *See id.*

66 *See, e.g.*, ALASKA STAT. § 23.40.070(2) (2016); *see also* Conn. Gen. Stat. Ann. § 5-271(a) (West 2017); DEL. CODE ANN. tit. 19, §§ 1601, 1602(n) (2013); FLA. STAT. ANN. § 447.309(1) (West 2013); HAW. REV. STAT. § 89-9(a) (2012); 5 ILL. COMP. STAT. ANN. § 315/2 (West 2013); IND. CODE ANN. §§ 36-8-22-3, 36-8-22-8 (West 2016); IOWA CODE ANN. § 20.9(1) (WEST 2010); KY. REV. STAT. ANN. §§ 67A.6902(1) (West 2006); MASS. ANN. LAWS ch. 150E, § 6 (LexisNexis 2016); MICH. COMP. LAWS ANN. § 423.215(1) (West 2001); MINN. STAT. ANN. §§ 179A.03, subd. 19, 179A.06, subd. 5 (West 2018); MONT. CODE ANN. § 39-31-305(2) (2017); NEB. REV. STAT. ANN. § 48-816(1)(a) (LexisNexis 2012); NEV. REV. STAT. ANN. § 288.150(2) (LexisNexis 2017); N.H. REV. STAT. ANN. §§ 273-A:1, 273-A:3 (2010); N.J. STAT. ANN. §§ 34:13A-5.3, 34:13A-23 (West 2011); N.M. STAT. ANN. § 10-7E-17(A)(1) (2017); N.Y. CIV. SERV. LAW §§ 204(2)–(3) (McKinney 2011); OHIO REV. CODE ANN. § 4117.03(A)(4) (West 2007); OKLA. STAT. ANN. tit. 11, § 51-101(A) (West 2012); OR. REV. STAT. ANN. §§ 243.650(7)(a), 243.662 (West 2012); 43 PA. STAT. AND CONS. STAT. ANN. § 217.1 (West 2009); 28 R.I. GEN. LAWS § 28-9.2-4 (2003); S.D. CODIFIED LAWS § 3-18-3 (2013); TEX. LOC. GOV'T CODE ANN. § 174.002(b) (West 2016); UTAH CODE ANN. § 34-19-1(1) (LexisNexis 2015); VT. STAT. ANN. tit. 21, § 1725(a) (2016); WASH. REV. CODE ANN. §§ 41.56.030, 41.56.040, 51.56.030(4) (West 2016).

state labor relations boards commonly interpret terms like "conditions of employment" to give officers the ability to bargain collectively about a broad range of topics, including limitations on how supervisors can interrogate officers during internal disciplinary investigations.[67] Thus, as a practical matter, police union contracts are one of the primary vehicles by which police unions have been able to secure protections for officers facing disciplinary interrogations, as well as other procedural protections limiting investigations, suspensions, and terminations.

Second, many states have enacted statutes that regulate interrogations of police officers.[68] These state laws generally fall into two categories.[69] Many states have civil service statutes that regulate "demotions, transfers, layoffs and recalls, discharges, training, salary administration, attendance control, safety, grievances, pay and benefit

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67 *See, e.g.*, City of Reno v. Reno Police Protective Ass'n, 653 P.2d 156, 157–58 (Nev. 1982) (holding that the local city government had to collectively bargain with police municipalities over disciplinary procedures as required by Nevada law); Union Twp. Bd. of Trs. v. Fraternal Order of Police, Ohio Valley Lodge No. 112, 766 N.E.2d 1027, 1031–32 (Ohio Ct. App. 2001) (holding that disciplinary procedures must be bargained collectively, and in the end, a third-party mediator could decide which disciplinary procedures to include in the final agreement). *But c.f.*, Local 346, Int'l Bhd. of Police Officers v. Labor Relations Comm'n, 462 N.E.2d 96, 102 (Mass. 1984) (exempting polygraph usage from terms of collective bargaining process); State v. State Troopers Fraternal Ass'n, 634 A.2d 478, 479, 493 (N.J. 1993) (limiting subjects appropriate for collective bargaining for police in cases of disciplinary investigations). It is also worth noting that in most communities, "unions are selected and govern on a majority rule principle"—that is, "the union chosen by the majority of employees in a job classification or department . . . is the exclusive representative of all the employees in that unit." Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712, 738 (2017). These bargaining representatives have often prioritized rules that prevent management from exercising its disciplinary authority arbitrarily. *See id.* Such a focus is understandable, as a number of scholars have criticized the apparently arbitrary nature of internal disciplinary action in local police departments. Prior studies have found that a significant number of police union contracts have been successful in apparently limiting the ability of supervisors to engage in such arbitrary behavior by carefully regulating the intake of civilian complaints, the behavior of investigators during interrogations of officers suspected of misconduct, the retention of personnel files, the adjudication of disciplinary action and disciplinary appeals, and the indemnification of officers facing civil suits for misconduct. *See generally* Rushin, *Police Union Contracts*, *supra* note 47, at 1221–39.

68 *See* Levine & Rushin, *supra* note 52, at 1689 ("It appears that as many as twenty or more states have enacted LEOBRs that explicitly protect officers during internal investigations."). It is worth noting that other studies have found a smaller number of LEOBRs. Hager, *supra* note 20. This difference in the apparent number of LEOBRs may be attributable to different studies using different definitions of LEOBRs.

69 *See* Hodges, *supra* note 49, at 100 (explaining there are "two statutory schemes—collective bargaining and civil service"); *see also* Keenan & Walker, *supra* note 48, at 185 (providing that through their respective "collective bargaining representatives" police officers gained employee protections against "investigations for official misconduct" through codified LEOBRs).

determination, and classification of positions . . . ."[70] But civil service statutes only occasionally touch on the kinds of procedures police departments must follow in conducting officer interrogations. A smaller number of states, though, have enacted LEOBRs, which provide officers with an additional layer of procedural protections during internal investigations and disciplinary actions above and beyond those given to other government employees through civil service statutes.[71] These LEOBRs frequently include limitations on the interrogation of officers suspected of misconduct.[72]

As the next Part discusses, a number of prior scholars have written on the internal disciplinary protections afforded to officers in union contracts, LEOBRs, and civil service laws. But within this literature, few have comprehensively and empirically examined the interrogation protections afforded to police officers facing internal investigations, nor have many empirically examined whether these protections impede accountability.

II. The Existing Literature on Interrogations of Police Officers

A handful of prior studies have examined how collective bargaining agreements and LEOBRs protect police officers during disciplinary interrogations. Professor Samuel Walker has written multiple examinations, both published and unpublished, that explore the ways that some municipalities limit officer interrogations.[73] In an unpublished manuscript, Professor Walker argued that there is no scientific evidence to support the proposition that delays of disciplinary interviews improve officer memory.[74] Professor Walker has also teamed up with Kevin M. Keenan to consider the ways that LEOBRs regulate

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70 Hodges, *supra* note 49, at 102.

71 *See* Keenan & Walker, *supra* note 48, at 185–86 (LEOBRs "have succeeded in gaining a special layer of employee due process protections when [police officers are] faced with investigations for official misconduct . . . [and] some LEOBRs grant police officers more specific protections than are provided other public employees . . . .").

72 *Id.*; *see* Levine & Rushin, *supra* note 52, at 1689 (noting how the approximately 20 existing LEOBRs frequently touch on this topic).

73 *See, e.g.*, Samuel Walker, The Baltimore Police Union Contract and the Law Enforcement Officers's Bill of Rights: Impediments to Accountability (May 2015) (unpublished manuscript) (available at http://samuelwalker.net/wp-content/uploads/2015/06/BALTIMORE-POLICE-UNION-CONTRACTFinal.pdf [https://perma.cc/X45J-3QZN]) (providing a detailed breakdown of the Baltimore police union contract and the Maryland LEOBR to show how each impedes effective investigation for alleged officer misconduct).

74 Walker, *supra* note 19.

officer interrogations.[75] That study found that multiple LEOBRs delay officer interrogation about suspected wrongdoing.[76] Civil rights activists DeRay McKesson, Samuel Sinyangwe, Johnetta Elzie, and Brittany Packnett have done critically important work in collecting and analyzing police union contract language from 81 large American police departments.[77] Their study objected to a wide range of limitations on the ability of investigators to question officers suspected of misconduct.[78] Specifically, they took issue with portions of union contracts and LEOBRs that provide officers with any protections not guaranteed to civilians or that otherwise give officers protections from accountability, including provisions that delay interrogations, limit the kinds of language that can be used during interrogations, limit the length of interrogations, discourage interrogations at unusual hours, ensure officers have access to personal necessities, guarantee officers access to a recorded copy of the interrogation, provide access to incriminating evidence, and more.[79] Major news outlets, including *Reuters*[80] and *The Guardian*,[81] conducted similar examinations of police union contracts, finding that some regulated how investigators could interrogate police officers. Professors Aziz Huq and Richard McAdams have written about the effect of interrogation delays—or as they refer to them "interrogation buffers"—on officer accountability.[82] Their study considered creative ways that attorneys and advo-

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75 Keenan & Walker, *supra* note 48, at 203–23 (examining the legal protections in LEOBRs for officers by reviewing several state LEOBRs, which includes discussion on the investigation processes of an officer suspected of misconduct).

76 *See id.* at 212.

77 DeRay McKesson, Samuel Sinyangwe, Johnetta Elzie & Brittany Packnett, *Police Union Contracts and Police Bill of Rights Analysis*, CAMPAIGN ZERO (June 29, 2016), https://static1.squarespace.com/static/559fbf2be4b08ef197467542/t/5773f695f7e0abbdfe28a1f0/1467217560243/Campaign+Zero+Police+Union+Contract+Report.pdf [https://perma.cc/DR7X-2QWW].

78 *Id.*

79 *Id.*

80 Reade Levinson, *Across the U.S., Police Contracts Shield Officers from Scrutiny and Discipline*, REUTERS (Jan. 13, 2017, 1:18 PM), http://www.reuters.com/investigates/special-report/usa-police-unions [https://perma.cc/5UZ3-BTR3] (evaluating a dataset of 82 police union contracts from some of the largest cities in the United States and explaining how they may impair internal investigations).

81 George Joseph, *Leaked Police Files Contain Guarantees Disciplinary Records Will Be Kept Secret*, THE GUARDIAN (Feb. 7, 2016, 7:00 AM), https://www.theguardian.com/us-news/2016/feb/07/leaked-police-files-contain-guarantees-disciplinary-records-will-be-kept-secret [https://perma.cc/JB94-796D] (detailing questionable clauses found in union contracts revealed as part of the hack of the Fraternal Order of Police).

82 *See* Aziz Z. Huq & Richard H. McAdams, *Litigating the Blue Wall of Silence: How to Challenge the Police Privilege to Delay Investigation*, 2016 U. CHI. LEGAL F. 213, 220.

cates could fight back against these provisions.[83] Professors Catherine L. Fisk and L. Song Richardson reviewed the content of a handful of police union contracts in a recent study.[84] In their study, they expressed some concern about the effect of interrogation delays on officer accountability.[85] Finally, Professor Stephen Rushin similarly noted that many police union contracts delayed officer interrogations for rigid periods of time and provided officers with access to potentially incriminating evidence.[86]

These studies provide compelling evidence to suggest that police union contracts and LEOBRs frequently regulate the methods by which investigators may interrogate officers about suspected wrongdoing.[87] Nevertheless, these existing studies do not foreclose the need for additional research into this topic. This Article addresses that need in four ways. First, this study builds on the methodology employed by previous studies.[88] It relies on a substantially larger dataset of police union contracts than most of the previous studies. This allows for this study to draw somewhat more generalizable conclusions about the commonality of these limits on interrogation procedures for police officers, across a more diverse range of American police departments. This also allows us to examine whether geography, demographics, or other characteristics affect the likelihood of a police department giving generous protections to police officers during interrogations.

Second, as discussed in more depth in Part IV, this Article also relies on a wide range of variables related specifically to police interrogations. Third, this Article conducts a national survey of police officers to understand whether these limitations on interrogations of police officers actually impair accountability and oversight efforts.[89] And finally, by comparing our data to leading interrogation manuals, this Article makes several normative recommendations about how municipalities ought to approach the regulation of interrogations of police officer suspects.[90] In this way, this Article makes a unique contribution to the existing literature and builds on the growing body of

83 *Id.* at 240–52.

84 *See* Fisk & Richardson, *supra* note 67.

85 *Id.* at 750–51.

86 Rushin, *Police Union Contracts*, *supra* note 47, at 1220–22.

87 *See generally supra* text accompanying notes 63, 65–70, 71–74.

88 *See supra* notes 77–84 and accompanying text; *see also* Appendix A. *See generally supra* notes 67, 69–70, 71, 73.

89 *See infra* Sections III.B, IV.C.

90 *Infra* Part V.

research in this important field. The next Part discusses the specific methodology employed in this Article.

III. METHODOLOGY

This Article seeks to answer two separate research questions. First, the Article examines the kind of interrogation protections that police officers have secured via the collective bargaining process and through LEOBRs. Second, the Article considers whether these protections limit the ability of investigators to uncover the truth or otherwise burden internal disciplinary investigations. To answer these questions, this Article employs multiple empirical methodologies, as described in subsections that follow.

A. Content Analysis to Identify Common Types of Interrogation Protections

To better understand the kind of interrogation protections offered to police officers across the United States, this Article relies on a dataset of police union contracts collected between 2014 and 2017[91] and all existing LEOBRs as of 2016.[92] Consistent with other recent studies of police policies, this dataset focuses on municipal police departments, rather than sheriff's departments, state highway patrols, or other specialized law enforcement agencies.[93] Public record requests, searches of municipal websites, searches of state repositories, and web searches resulted in the collection of police union contracts from 657 municipal agencies serving communities with around 30,000 residents or more.[94] A complete list of the departments studied as part of this

91 Rushin, *Police Union Contracts*, *supra* note 47, at 1217–18. One of the authors of this study has employed this same dataset in two other prior projects. *See id.* at 1217 (using a segment of this dataset to analyze how union contracts can impede officer accountability in departments serving communities with at least 100,000 residents); *see also* Stephen Rushin, *Police Disciplinary Appeals*, 167 U. PA. L. REV. (forthcoming 2019) [hereinafter Rushin, *Police Disciplinary Appeals*] (using this same dataset of contracts to analyze how union contracts establish a disciplinary-appeals process that may impede accountability).

92 Huq & McAdams, *supra* note 82, at 222 (providing a list of the 20 existing LEOBRs identified in their study that regulate interrogations).

93 *See, e.g.*, Mary D. Fan, *Privacy, Public Disclosure, Police Body Cameras: Policy Splits*, 68 ALA. L. REV. 395, 423–24 (2016) (analyzing police body camera policies from the largest 100 municipal police departments and limiting analysis to municipal agencies rather than other law enforcement agencies); Rushin, *Police Union Contracts*, *supra* note 47, at 1218–19 (similarly limiting study to municipal agencies); Rushin, *Police Disciplinary Appeals*, *supra* note 91, at 23–24 (also looking exclusively at municipal police departments).

94 Approximately 61% of these contracts come from municipal websites, 18% from state websites, 5% from police association or union websites, 2% from media reports, and 11% from public record requests. Roughly 3% of these contracts were only available through previous

dataset is available in the Appendix. This dataset covers 40 states and the District of Columbia. This dataset builds on the important efforts of other researchers who have also collected police union contracts, including the Better Government Association,[95] Campaign Zero,[96] the Combined Law Enforcement Associations of Texas,[97] *The Guardian*,[98] Labor Relations Information Systems,[99] and *Reuters*.[100]

Although this dataset provides a relatively comprehensive look at the types of protections afforded to officers in unionized, municipal police departments serving communities with around 30,000 residents or more, it is not necessarily generalizable to all law enforcement agencies.[101] Policies in smaller and nonunionized departments may differ from the departments studied in this dataset.[102] To begin analyzing the content of the contracts in this data, we next identified variables. To do this, we first surveyed the existing literature, consulted leading interrogation manuals, and conducted a preliminary examination of the dataset to identify language regulating officer interrogations in police union contracts and LEOBRs that may impair oversight and accountability.

First, we observed that provisions in union contracts and LEOBRs that delay officer interrogations may raise accountability con-

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union contract collections by other organizations like the Better Government Association, Campaign Zero, *The Guardian*, Labor Relations Information Systems, and *Reuters*, all of which make some contracts available online. The municipal departments covered in this dataset serve as the primary law enforcement agency for around 97 million Americans. The median population served by this dataset is around 68,000 residents. *See* Rushin, *Police Disciplinary Appeals, supra* note 91, at 63 (using this same dataset).

95 The Better Government Association previously published a Collective Bargaining Database. As of the time of this Article, the Database appears to no longer be publicly available, but we thank the Better Government Association for providing the public with this great resource for many years. BETTER GOVERNMENT ASSOCIATION, *Collective Bargaining Database*, http://www.bettergov.org/collective-bargaining-database [https://perma.cc/Q78P-WAW3] (collected and made available contracts from Chicago and surrounding areas).

96 McKesson et al., *supra* note 77 (collecting and coding 81 police union contracts from the largest 100 municipal police departments).

97 COMBINED LAW ENFORCEMENT ASSOCIATIONS OF TEXAS, CONTRACTS, https://www.cleat.org/contracts [https://perma.cc/JG65-QMCK] (making numerous contracts from Texas available through their website).

98 Joseph, *supra* note 81 (discussing the contents of 67 contracts leaked as part of a hack of the Fraternal Order of Police).

99 LABOR RELATIONS INFORMATION SYSTEM, LRIS PUBLIC SAFETY CONTRACT DATABASE, https://www.lris.com/contracts/index.php [https://perma.cc/3YC5-USLA] (providing a database of union contracts from a number of police departments across the country).

100 Levinson, *supra* note 80 (collecting and coding 82 contracts from the largest 100 municipal police departments in the United States).

101 *See* Rushin, *Police Disciplinary Appeals*, supra note 91, at 64.

102 *Id.*

cerns.[103] Many previous scholars have worried that delaying interrogations of police officers after alleged misconduct may impede accountability. But prior researchers have disagreed about which types of delays present accountability concerns.[104] If a police department wants to interrogate an officer about criminal behavior, the officer is entitled to an attorney like any other criminal suspect.[105] Additionally, if a police department forces an officer to answer questions during an interrogation, the Constitution provides limits on the ability of prosecutors to use such compulsory statements in later criminal prosecutions.[106] Because of this, internal investigators must often ensure that an officer suspected of misconduct has the opportunity to secure representation before an interview or interrogation.[107] In our judgment, and as discussed in more detail in Part IV, contracts that provide officers with a reasonable length of time to secure representation before an interview present no accountability issues.

But at least one prior study of police union contracts has distinguished between those that provide officers with "reasonable" delays, and those that allow officers to delay interrogations for set lengths of time, regardless of the circumstances.[108] In our judgment, officers are more likely to abuse contractual language that delays officer interviews for set lengths of time.[109] These rigid time allotments create a

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103 *See supra* Part II.

104 *See* Huq & McAdams, *supra* note 82 (discussing throughout some of the objections to delays of officer interrogations in cases of alleged misconduct); *see also* Fisk & Richardson, *supra* note 67, at 750 (also identifying possible objections to the general concept of delays in interrogations); Keenan & Walker, *supra* note 48, at 212–14 (expressing concern about delays of officer interrogations); McKesson et al., *supra* note 77, at 2–3; Rushin, *Police Union Contracts*, *supra* note 47, at 1224–28 (describing some of the objections to delaying officer interrogations).

105 *See* Miranda v. Arizona, 384 U.S. 436, 479 (1966) (establishing a right to four prophylactic warnings in the event police attempt to elicit incriminating information from a suspect during a custodial interrogation).

106 *See* Garrity v. New Jersey, 385 U.S. 493, 499–500 (1967).

107 *See* Keenan & Walker, *supra* note 48, at 212.

108 *See, e.g.*, Rushin, *Police Union Contracts*, *supra* note 47, at 1224–25 (arguing that contracts that only provide for a "reasonable" delay period may present a lower risk than those that elaborate a strict time limitation). It is also worth noting that other studies have not seemingly distinguished delay provisions in this manner. *See* McKesson et al., *supra* note 77, at 5–6 (grouping together a wider range of provisions that allow officers to have any sort of delay before an interrogation).

109 Rushin, *Police Union Contracts*, *supra* note 47, at 1224–25 (stating that "[w]hile 'reasonable' waiting periods to allow officers to secure representation could be abused, in my estimation, waiting periods that designate set lengths of time are more inflexible and therefore even more troublesome"); *see also* Keenan & Walker, *supra* note 48, at 212–14 (arguing that departments should give officers a "reasonable period prior to a formal interrogation to secure representation," but should prohibit prolonged delays to avoid collusion and the coordination of stories).

greater likelihood that officers may be able to use a delay period to coordinate stories in a manner that could circumvent accountability. Thus, we settled on two coding definitions related to interrogation delays. The first variable looks at whether the contract includes any stipulation that delays officer interviews or interrogations after alleged wrongdoing for a set length of time. The second variable codes the contracts for the length of the typical delay (in hours) before an interrogation.

Second, we found that provisions in union contracts and LEOBRs granting officers access to information before an interrogation may raise accountability concerns.[110] There is general agreement in the existing literature that providing officers with access to incriminating evidence before an interrogation could serve as a barrier to reasonable oversight and accountability.[111] But within these existing studies, researchers have often disagreed as to what kind of evidence investigators should not provide to officers before an interrogation. Some prior researchers have taken an expansive view on this question, understandably arguing that police officers should not be given additional protections beyond those afforded to civilians.[112] For example, some researchers object to contracts that give officers access to copies of recordings from interrogations[113] and contracts that give officers a basic summary of the circumstances that led to an interrogation.[114]

We take a narrower view than some prior researchers of the circumstances that may raise accountability concerns. For example, we think it is unlikely that recording an interrogation presents any meaningful barrier to accountability—instead, we think this is a normatively desirable policy as we describe in more detail in Section V.A.[115] We also do not object to any contractual language that gives officers a basic appraisal of the reason for an investigative interview. We do not believe these kinds of provisions will frequently impair the ability of an interrogator to elicit incriminating statements in a humane manner.

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110 *See generally* Rushin, *Police Union Contracts*, *supra* note 47.

111 *See, e.g.*, McKesson et al., *supra* note 77, at 4–6 (including a variable for the provision of evidence not provided to civilians before interrogations); Rushin, *Police Union Contracts*, *supra* note 47, at 1220, 1224–28.

112 *See, e.g.*, McKesson et al., *supra* note 77.

113 *Id.* at 5–6 (identifying North Las Vegas, Wichita, Tulsa, and Tucson as just a few of the cities that fall into this category).

114 *Id.* (identifying Lincoln, Nebraska as having a problematic contractual term, in part because it provides officers with information about the nature of a complaint before an interrogation).

115 On this point, we adopt the view of Professor Kate Levine. Levine, *supra* note 50, at 1212 (arguing that LEOBRs should be a model for how we ought to treat criminal suspects).

In fact, leading interrogation manuals recommend that investigators provide civilian suspects with such basic information.[116]

But in our initial examination of the dataset, we noticed that a large number of contracts give officers the right to obtain potentially incriminating information. By obtaining this information in advance of an interrogation, we believe these contractual terms may allow officers to circumvent effective interrogation techniques. For coding purposes, we settled on four major types of evidence we believe fit into this category: (1) a copy of the civilian complaint that serves as the basis of the interview, (2) the name of any or all complainants, (3) photographic or video evidence, and (4) GPS or locational data. Combined, we believe that these four variables allow us to identify and categorize a wide range of contractual language that gives officers access to potentially incriminating evidence, likely creating a barrier to oversight and accountability.

Third, a number of prior studies argue that other limitations of interrogations may impede officer accountability. After consulting the literature on false confessions and leading interrogation manuals, we decided not to code for any of these variables, as we do not believe they raise significant accountability concerns. For example, other researchers in the field have objected to contractual language that limits the use of abusive language or threats,[117] limits the number of officers that can interrogate an officer,[118] allows officers to tend to personal necessities like bathroom use,[119] restricts the ability of investigators to interrogate officers outside of reasonable work hours except in exigent circumstances,[120] or prevents interrogations from lasting an unreasonable length of time.[121] No doubt, it is troubling that civilians are not always guaranteed many of these protections during custodial interrogations. The desire for parity between officer and civilian interro-

116 *See*, *e.g.*, Christopher Haney & Andrea Roller, *Investigative Interview Techniques*, DUFF & PHELPS (2012), https://www.duffandphelps.com/-/media/assets/pdfs/publications/disputes-and-investigations/investigative-interview-techniques.ashx [https://perma.cc/P7L5-ZRD8].

117 *See* McKesson et al., *supra* note 77 (for example, objecting to portions of the Albuquerque contract that limit the use of offensive language and coercion and portions of the Buffalo contract that prevent threatening or offensive language).

118 *See, e.g.*, *id.* (citing Jacksonville and Louisville as jurisdictions that offer such protections).

119 *See, e.g.*, *id.* (identifying such provisions in the contracts in Buffalo, Chicago, Corpus Christi, Hialeah, and Honolulu).

120 *See, e.g.*, *id.* (citing Milwaukee and Columbus as examples of jurisdictions that provide such protections for officers).

121 *See, e.g.*, *id.* (identifying these sorts of provisions in the Chicago, Columbus, and Corpus Christi contracts).

gations is understandable. Nevertheless, we fail to find any evidence in the existing literature or leading interrogation manuals to suggest that these sorts of restrictions on interrogations present meaningful barriers to accountability.

In our judgment, no person—be they an officer or a civilian—ought to be subject to abusive language or threats during interrogations. No one should be subject to unreasonably long interrogations at unusual hours. No one should be denied the opportunity to use the bathroom or tend to other personal necessities. And ideally, all interrogations should be recorded.

We discuss the reasons for these beliefs in more detail in Part V. Even if the U.S. Constitution does not guarantee each of these protections to civilian suspects in all cases, we do not support removing these protections from officers facing internal investigations. While parity between officer and civilian interrogations may be normatively desirable, this desire for parity should not lead us on a race to the bottom. On this point, we tend to side with Professor Kate Levine, who has persuasively argued that these sorts of protections are "more in line with our current notions of humane treatment of those who are suspected of violating the criminal law."[122] Thus, we focus our content analysis on provisions in union contracts and LEOBRs that, in our judgment, raise more significant accountability concerns. Table 1 summarizes the variable names and definitions we employed in our coding for this Article.

TABLE 1. CODING VARIABLES AND DEFINITIONS

Variable	Definition
Delays Interrogation or Interview	The contract or LEOBR includes any stipulation that delays officer interviews or interrogations after alleged wrongdoing for a set length of time, or requires rigid procedural hurdles that achieve the same result
Length of Typical Delay Before Interrogation	Approximate length of time in hours of the typical delay before an interrogation
Provides Officers with Access to Evidence Before Interrogation or Interview	The contract or LEOBR provides officers with access to any evidence before interviews or interrogations about alleged wrongdoing, defined as anything more than a summary or appraisal of the basic facts
Access to Complaint	The contract or LEOBR provides officers with a copy of a complaint before an interrogation or interview
Access to Names of Complainants	The contract or LEOBR provides officers with the name of a complainant before an interrogation or interview

122 Levine, *supra* note 50, at 1211-12.

Access to Video or Photographic Evidence	The contract or LEOBR provides officers with video or photographic evidence related to alleged misconduct before an interrogation or interview
Access to GPS Evidence	The contract or LEOBR provides officers with global positioning system evidence or vehicle locational data before an interrogation or interview

This study employed three coders to evaluate our dataset of 657 contracts according to the variable definitions listed in Table 1.[123] We found that the three coders used as part of this project demonstrated high levels of intercoder reliability. All contracts underwent two rounds of coding. In a small handful of cases where these two independent rounds of coding resulted in conflicting coding results, the contract underwent a third and final round of coding.

In total, our coders made 4,599 coding decisions. We identified less than one percent of these coding decisions to be borderline cases—that is cases where the contractual term did not neatly fit into one of the definitions listed in Table 1. These borderline cases underwent additional analysis, requiring us to use our best judgment. Given the relatively small number of such borderline cases and the large number of contracts in our dataset, we believe that they do not significantly affect the cumulative results of our study.

B. Surveying Police Officers to Evaluate the Effects of Interrogation Protections

After identifying the package of procedural protections afforded to officers during investigatory interviews through our content analysis, the second part of this paper seeks to answer a different empirical question: do these limitations on interrogation techniques impair the ability of investigators to uncover the truth or elicit incriminating statements? Unfortunately, there is no easy way to answer this question. Ideally, an empirical examination of this research question would involve a controlled experiment where researchers vary the use of these procedural protections to determine whether their use hampers the ability of interrogators to uncover incriminating information. But such an experiment is impractical. Instead, this Article employs a different methodological approach.

We conducted a survey of American law enforcement leaders to assess whether they believe that these sorts of procedural protections

123 We originally employed four coders. One coder, though, showed low levels of intercoder reliability. Thus, we removed this coder's responses from our dataset and reconducted our analysis according to the methodology described in this Section.

impede effective investigations or otherwise impair the ability of an interrogator to uncover the truth. We defined law enforcement leaders as the head of any police agency at the municipal level (typically police chiefs), focusing specifically on municipal police departments—that is, police departments generally serving incorporated cities, towns, and villages. The average rank-and-file officer may not have prior experience conducting custodial interrogations.[124] By contrast, we believe that police chiefs are well positioned among the law enforcement community to provide valuable feedback to our survey questions. Police chiefs generally have extensive prior experience in various roles in a police agency.[125] Police chiefs are also different from the average rank-and-file officer in that they must regularly consider the implementation of regulations of officer behavior. Thus, we believe that police leaders can draw on their prior experiences to judge the potential effects of interrogation regulations.

To identify these municipal police chiefs, we rely on a database of all law enforcement agencies in the United States compiled by a commercial agency, the National Public Safety Information Bureau.[126] This database includes the names and contact information for heads of around 22,000 state and local law enforcement agencies across the country (including municipal city police departments, county sheriff's offices, state troopers, state highway patrols, and more), of which around 12,500 were designated as municipal law enforcement agencies.[127] The number of agencies identified by this commercial database is roughly consistent with the number of agencies identified by the Bureau of Justice Statistics in its semiregular Census of State and Local Law Enforcement Agencies.[128] This gives us reasonably high confi-

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124 *See* ROD GEHL & DARRYL PLECAS, INTRODUCTION TO CRIMINAL INVESTIGATION: PROCESSES, PRACTICES AND THINKING 122 (2016).

125 *E.g.*, CITY OF MARINA, CAL., *Chief of Police*, https://www.ci.marina.ca.us/DocumentCenter/View/437/Chief-of-Police?bidId [https://perma.cc/ZHP4-3C36] (describing the role and necessary qualifications of city's police chief).

126 NATIONAL PUBLIC SAFETY INFORMATION BUREAU, NATIONAL DIRECTORY OF LAW ENFORCEMENT ADMINISTRATORS, http://www.safetysource.com/directories/index.cfm [https://perma.cc/DPW8-TRU9].

127 *See id.*

128 BRIAN A. REAVES, BUREAU OF JUSTICE STATISTICS, NCJ 233982, CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES, 2008, at 12 (2011) (stating that there are more than 20,000 state and local law enforcement agencies potentially operating as of 2008). The commercial database contained between 21,830 and 22,229 state and local agencies, depending on how you define law enforcement agencies that serve transportation areas like railroads, harbors, and airports. NATIONAL PUBLIC SAFETY INFORMATION BUREAU, *supra* note 126.

dence that this commercial database contains contact information for nearly all state and local law enforcement agencies in the country.[129]

We drew from this commercial database a random sample of 550 leaders from municipal law enforcement agencies across the country. This random sample represents a demographically and geographically diverse cross section of American police departments from 48 states. We mailed this survey instrument in June 2018. In the weeks that followed, we received a 28.4% response rate, resulting in the collection of survey responses from 156 police leaders across the country.[130]

Our survey instrument asked police leaders three standard questions. First, we asked participants whether waiting periods before an interrogation burdens an investigation or otherwise limits the ability of interrogators to uncover the truth. Second, we asked participants whether providing suspects with access to potentially incriminating evidence before an interrogation burdens an investigation or otherwise limits the ability of interrogators to uncover the truth. And third, we asked participants whether either of these protections may be useful in reducing the rates of false confessions. A full version of an example survey instrument is in Appendix B.

We recognize that, as heads of law enforcement agencies, police leaders may be incentivized to misrepresent the harmful effects of procedural limits on officer interrogations. After all, such protections serve as a limitation on the ability of police leaders to exercise control over disciplinary matters. To address this, we designed our survey instrument so as to *not* ask law enforcement leaders about their opinions of interrogations of *police officers*. Rather, our survey instrument is careful to only ask law enforcement leaders about whether such limits on interrogations *generally* would burden investigations (criminal or otherwise), limit the ability of interrogators to uncover the truth, or contribute to a reduction in false confessions. Thus, our goal in ad-

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129 The National Public Safety Information Bureau updates their database annually. NATIONAL PUBLIC SAFETY INFORMATION BUREAU, *supra* note 126. Thus, while some survey respondents may move or change positions, we feel confident that this survey instrument ultimately reached our sample given our reasonably high response rate.

130 We believe that this number of responses allows us to make generalizable conclusions about the opinions of the underlying population. Ideally, we would have collected more responses. But we had limited funding available. Given that there are around 12,500 municipal law enforcement agencies in the United States, our survey has an 8% margin of error, assuming a 95% confidence interval. This is slightly higher than we would have preferred. Nevertheless, our survey responses, as discussed in more detail in Section IV.C, showed remarkable uniformity. Regardless of this margin of error, we feel confident in claiming that the overwhelming majority of American police leaders believe that these regulations impair investigations or otherwise limit the ability of investigators to uncover the truth.

ministering this survey is to understand whether, regardless of the target of an interrogation, police leaders believe that these procedural limits on interrogator authority impair investigations. In the Part that follows, we discuss the results from our multimethod examination.

IV. How Officer Interrogation Procedures Limit Accountability

We find that a substantial number of jurisdictions in our dataset provide officers with a designated waiting period before disciplinary interrogations. Among departments that delay interrogations of police officers, the median agency provides officers with at least 48 hours of notice before an interrogation. A substantial number of police departments also provide officers with access to some types of potentially incriminating evidence before initiating an interrogation, including the civilian complaint and the complainants' names. Far fewer jurisdictions permit officers to have access to GPS evidence or video and photographic evidence. Table 2 summarizes the key findings from our content analysis.

Table 2. Interrogation Protections Given to Officers Across Dataset of Police Union Contracts and Law Enforcement Officer Bills of Rights

Variable	Frequency
Delays Interrogation	20.9% (137/657)
Provides Officers with Access to Evidence Before Interrogation	28.0% (184/657)
Access to Complaint	21.5% (141/657)
Access to Names of Complainants	21.5% (141/657)
Access to Video or Photographic Evidence	11.6% (76/657)
Access to GPS Evidence	10.0% (66/657)

Virtually all police leaders who responded to our survey instrument claimed that any of the provisions described in Table 2 would frequently or occasionally burden investigations or otherwise impede the search for the truth. And almost all survey respondents claimed that these protections would not reduce the risk of a suspect falsely confessing. Sections A and B discuss the results of our content analy-

sis and Section C presents the data from our national survey of law enforcement leaders.

A. Delays in Interrogations

Around one in five jurisdictions have police union contracts or LEOBRs that delay officer interrogations for a designated period of time. Of these, the median jurisdiction delays interrogations for around 48 hours, while the average department delays interrogations for around 67 hours. In other words, the typical police department in our dataset gives officers two days or more of notice before it may conduct an interrogation related to alleged misconduct. Some agencies offer substantially longer delays. For example, the Bowling Green, Ohio contract states that officers should receive around 120 hours of notice before they face disciplinary interviews.[131] Norman, Oklahoma typically gives officers 240 hours of notice.[132] Officers in Palm Bay, Florida may have as many as 504 hours of notice before they face an interrogation.[133] And in Seattle, the union contract can delay officer interrogation for 720 hours.[134]

Agencies in other cities like Albuquerque, New Mexico,[135] Clifton, New Jersey,[136] DeKalb, Illinois,[137] Elk Grove, Illinois,[138] Gahanna,

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131 CITY OF BOWLING GREEN, OHIO, AGREEMENT BETWEEN THE CITY OF BOWLING GREEN, OHIO AND THE BOWLING GREEN POLICE PATROLMAN'S ASSOCIATION OPBA 6 (2014), https://www.bgohio.org/wp-content/uploads/2014/05/BGPPA.pdf [https://perma.cc/ZM3H-XFDF] (allowing a five-day delay for interrogations of officers).

132 CITY OF NORMAN, OKLA., AGREEMENT BETWEEN THE CITY OF NORMAN, OKLAHOMA AND THE FRATERNAL ORDER OF POLICE – LODGE NO. 122, at 6 (2016), http://www.normanok.gov/filebrowser_download/681/Human%20Resources/FOP%20Contract%20FYE%2017.pdf [https://perma.cc/MW48-LYCF] (providing officers with ten working days to secure representation before they can be interviewed about suspected misconduct).

133 CITY OF PALM BAY, FLA., AGREEMENT BETWEEN THE CITY OF PALM BAY, FLORIDA AND FRATERNAL ORDER OF POLICE, FLORIDA STATE LODGE, POLICE OFFICER'S UNIT 29 (2014) (on file with author) (giving officers seven days to schedule an interview with internal affairs and allowing that interview to be as many as fourteen days after the officer contacts internal affairs, potentially resulting in a twenty-one-day delay in some cases).

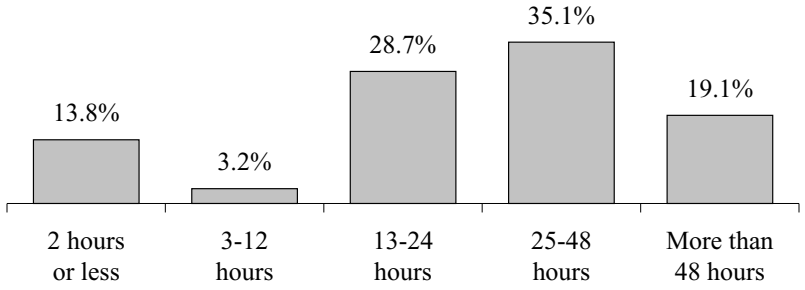
134 CITY OF SEATTLE, AGREEMENT BY AND BETWEEN THE CITY OF SEATTLE AND SEATTLE POLICE OFFICERS' GUILD 9–10 (2014), https://www.seattle.gov/personnel/resources/pubs/SPOG_CBA_2015-2020.pdf [https://perma.cc/5RXN-LXUG] (requiring that officers receive a classification report before an interrogation and allowing up to thirty days for the receipt and review of this classification report before an interrogation may happen).

135 *See* CITY OF ALBUQUERQUE, CITY OF ALBUQUERQUE AND ALBUQUERQUE POLICE OFFICERS ASSOCIATION: COLLECTIVE BARGAINING AGREEMENT 32 (2016), https://www.cabq.gov/humanresources/documents/albuquerquepoliceofficersassociationcontract201415.pdf [https://perma.cc/2ZPK-7M4B] (giving officers two hours to obtain representation before an interview).

136 *See* CITY OF CLIFTON, AGREEMENT BETWEEN CITY OF CLIFTON, PASSAIC COUNTY, NEW JERSEY AND PBA LOCAL #36, at 17–18 (2012) (on file with author) (giving officers up to two hours to consult with an attorney before an interview).

Ohio,[139] Hempstead, New York,[140] Tempe, Arizona,[141] Washington, D.C.,[142] and West Des Moines, Iowa[143] provide officers with far shorter delays of between 30 minutes and two hours before disciplinary interviews. While the median department provides officers with a 48-hour waiting period, the data appear to follow a bimodal distribution, as shown in the figure. A substantial number of police departments provide two hours or less, with many of the remaining agencies giving police officers a substantially longer delay before facing questions from internal investigators—generally between 24 and 72 hours.

DISTRIBUTION OF INTERROGATION DELAYS ACROSS DATASET OF POLICE UNION CONTRACTS



137 *See* CITY OF DEKALB, AGREEMENT BETWEEN THE CITY OF DEKALB AND DEKALB FRATERNAL ORDER OF POLICE LODGE 115, ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL 16 (2016), https://www.cityofdekalb.com/DocumentCenter/View/5370/FOP-Contract-from-July-1-2016-to-December-31-2019?bidId [https://perma.cc/X39F-JW56] (providing two-hour delay).

138 *See* VILL. OF ELK GROVE, LABOR AGREEMENT BETWEEN METROPOLITAN ALLIANCE OF POLICE ELK GROVE VILLAGE POLICE CHAPTER #141 AND VILLAGE OF ELK GROVE VILLAGE 6 (2014) (on file with author) (giving officers one hour to secure representation).

139 *See* CITY OF GAHANNA, COLLECTIVE BARGAINING AGREEMENT BETWEEN CITY OF GAHANNA AND FRATERNAL ORDER OF POLICE CAPITAL CITY LODGE NO. 9, at 14 (2016) (on file with author) (permitting a two-hour waiting period before an interrogation).

140 *See* VILL. OF HEMPSTEAD, VILLAGE OF HEMPSTEAD AND POLICE BENEVOLENT ASSOCIATION OF HEMPSTEAD, NEW YORK, INC. CONTRACT 8 (2011) (on file with author) (giving officers a mere one hour to secure representation).

141 *See* CITY OF TEMPE, TEMPE OFFICERS ASSOCIATION MEMORANDUM OF UNDERSTANDING 3–4 (2017), https://www.tempe.gov/home/showdocument?id=53211 [https://perma.cc/T9PF-CRAC] (giving officers 30 minutes to confer with representation before an investigatory interview).

142 *See* DISTRICT OF COLUMBIA, LABOR AGREEMENT BETWEEN THE GOVERNMENT OF THE DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT AND THE FRATERNAL ORDER OF POLICE, MPD LABOR COMMITTEE 14 (2004) (on file with author) (generally giving officers a two-hour waiting period, although allowing four hours in some cases).

143 *See* CITY OF WEST DES MOINES, CONTRACT: CITY OF WEST DES MOINES AND POLICE TEAMSTERS LOCAL 238, at 10 (2013) (on file with author) (providing officers with a one-hour waiting period).

While it is relatively common for police union contracts to provide officers with rigid waiting periods before interrogations, it is important to recognize that the majority of contracts make no such guarantee. Of course, police union contracts represent only one avenue by which officers have obtained protections. A number of LEOBRs provide similar protections, including Kentucky,[144] Louisiana,[145] Maryland,[146] and Nevada.[147] The waiting periods provided by these state LEOBRs range anywhere from 48 hours to 30 days.[148] The majority of state LEOBRs provide officers with a less rigid waiting period, frequently guaranteeing a "reasonable" delay for an officer to secure counsel or representation.[149] Nevertheless, some of these LEOBRs establish procedural hurdles that may functionally result in lengthy delays similar to or greater than the rigid waiting periods provided in other jurisdictions.[150]

B. Evidence Before Interrogations

A slightly larger percentage of police departments in our dataset have entered into union contracts or are bound by LEOBRs that require internal investigators to turn over potentially incriminating evidence to an officer before an interrogation. By far, the most common types of evidence provided to officers before an interrogation are a copy of a civilian complaint and the names of complainants. Around 28% of all jurisdictions in our dataset require officers to have access to at least some of this information or evidence before investigators

144 *See* KY. REV. STAT. ANN. § 15.520(1)(c) (West 2010) (providing that "[n]o police officer shall be subjected to interrogation in a departmental matter involving alleged misconduct on his or her part, until forty-eight (48) hours have expired from the time the request for interrogation is made to the accused officer, in writing").

145 *See* LA. STAT. ANN. § 40:2531(B)(4)(b)(i) (giving an officer up to 30 days to secure representation).

146 *See* MD. CODE ANN., PUB. SAFETY § 3-104(j)(2)(i)–(ii) (LexisNexis 2011) (guaranteeing up to five days to secure representation).

147 *See* NEV. REV. STAT. ANN. § 289.060(1) (LexisNexis 2017) (generally providing a 48-hour delay).

148 *See supra* notes 144–47.

149 *See* DEL. CODE ANN. tit. 11, § 9200(c)(9) (2015) (delaying interviews "for a period of time" so that an officer can obtain representation); 50 ILL. COMP. STAT. § 725/3.9 (2017) (establishing that "no interrogation shall proceed until reasonable time and opportunity are provided the officer to obtain counsel"); MINN. STAT. § 626.89, subd. 9 (also providing an officer with "a reasonable opportunity" to obtain counsel); 42 R.I. GEN. LAWS § 42-28.6-2(9) (2007) (similarly mandating a delay for a reasonable period of time to obtain counsel).

150 *See, e.g.*, IOWA CODE § 80F.1 (2018) (providing officers with a delay to have *both* a union representative or a designate of their choice present, as well as an attorney, guaranteeing the right to have the interview happen at an investigating agency facility, and providing no exceptions to these requirements like other LEOBRs).

can commence a disciplinary interrogation. These protections frequently flow from police union contracts in cities of all sizes, including Akron, Ohio,[151] Anchorage, Alaska,[152] Edmond, Oklahoma,[153] Elyria, Ohio,[154] Fort Wayne, Indiana,[155] Houston, Texas,[156] Lake Oswego, Oregon,[157] Las Vegas, Nevada,[158] and Warren, Michigan,[159] just to name a few.

A significantly smaller number of jurisdictions give officers access to video and photographic evidence related to the alleged misconduct (like body camera footage) or locational data (like GPS or AVL data).

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151 *See* CITY OF AKRON, AGREEMENT BETWEEN THE CITY OF AKRON AND FRATERNAL ORDER OF POLICE LODGE #7, at 9–10 (2016), https://s3.amazonaws.com/odx-serb-input-content/PDF/Contracts/2015/15-MED-10-1144.pdf [https://perma.cc/L9FC-ZE78] (giving officer access to copy of complaint before interview).

152 *See* MUNICIPALITY OF ANCHORAGE, COLLECTIVE BARGAINING AGREEMENT BETWEEN ANCHORAGE POLICE DEPARTMENT EMPLOYEES ASSOCIATION AND MUNICIPALITY OF ANCHORAGE 7–8 (2018), https://www.muni.org/Departments/employee_relations/Collective%20bargaining%20agreements/APDEA%202018-2020%20Collective%20Bargaining%20Agreement.pdf [https://perma.cc/ST2E-G8P8] (providing in non-criminal investigations a copy of the complaint and the name of the complainant before interrogations).

153 *See* CITY OF EDMOND, AGREEMENT BETWEEN CITY OF EDMOND AND THE FRATERNAL ORDER OF POLICE LOCAL 136, at 37 (2016) (on file with author) (giving officer copy of complaint and name of complainant before interrogation).

154 *See* CITY OF ELYRIA, AN AGREEMENT BY AND BETWEEN THE CITY OF ELYRIA, OHIO AND THE ELYRIA POLICE PATROLMAN'S ASSOCIATION 30 (2016) (on file with author) (providing officer in some cases with name of complainant and a copy of the complaint before an interrogation or interview).

155 *See* CITY OF FORT WAYNE, AGREEMENT BETWEEN THE CITY OF FORT WAYNE, INDIANA AND THE FORT WAYNE PATROLMEN'S BENEVOLENT ASSOCIATION, INC. 7 (2011) (on file with author) (giving officers access to a signed statement and complaint explaining basis for any allegation before questioning).

156 *See* CITY OF HOUSTON, MEET & CONFER AGREEMENT BETWEEN THE HOUSTON POLICE OFFICERS' UNION AS THE MAJORITY BARGAINING AGENT FOR ALL POLICE OFFICERS AND THE CITY OF HOUSTON, TEXAS 39 (2015), http://www.houstontx.gov/hr/hrfiles/classified_testing/hpd_meet_confer_2008_2015.pdf [https://perma.cc/5QTT-7KYV] (giving officer access to statements and complaints at time of 48-hour notification of an internal disciplinary interview).

157 *See* CITY OF LAKE OSWEGO, AGREEMENT BETWEEN THE CITY OF LAKE OSWEGO AND THE LAKE OSWEGO POLICE OFFICERS' ASSOCIATION (LOPOA) 46 (2016), https://www.ci.oswego.or.us/sites/default/files/fileattachments/hr/webpage/11512/lopoa_cba_final_7.1.16_to_6.30.19_rfs.pdf [https://perma.cc/H5UM-RJX5] (providing an officer with a signed and dated complaint from a complainant before any officer may be required to submit a written response).

158 *See* CITY OF LAS VEGAS, COLLECTIVE BARGAINING AGREEMENT BETWEEN LAS VEGAS METROPOLITAN POLICE DEPARTMENT AND LAS VEGAS POLICE PROTECTIVE ASSOCIATION 3 (2016), https://lvppa.com/wp-content/uploads/2016/10/CBA-2016-2019-signed.pdf [https://perma.cc/L8KZ-NN9M] (allowing officers to have access to extensive access to evidence on file with the police department investigators).

159 *See* CITY OF WARREN, COLLECTIVE BARGAINING AGREEMENT BETWEEN CITY OF WARREN AND WARREN POLICE OFFICERS ASSOCIATION 16 (2016) (on file with author) (giving officers access to complaint before an interrogation).

These jurisdictions include Fort Lauderdale, Florida,[160] Green Bay, Wisconsin,[161] Hobbs, New Mexico,[162] Kansas City, Missouri,[163] Phoenix, Arizona,[164] and a number of jurisdictions in Texas, including Austin,[165] Fort Worth,[166] Laredo,[167] Port Arthur,[168] San Antonio,[169] and San Marcos.[170]

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160 *See* CITY OF FORT LAUDERDALE, AGREEMENT BETWEEN THE CITY OF FORT LAUDERDALE AND THE FORT LAUDERDALE POLICE LODGE 31, POLICE OFFICERS AND SERGEANTS, at 15 (2013) (on file with author) (giving officer access to "[t]he complaint, all witness statements, including all other existing subject officer statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings related to the incident under investigation").

161 *See* CITY OF GREEN BAY, AGREEMENT BETWEEN CITY OF GREEN BAY AND GREEN BAY PROFESSIONAL POLICE ASSOCIATION 49 (2016) (on file with author) (giving officers access to description and summary of all physical evidence against officer).

162 *See* CITY OF HOBBS, A RESOLUTION APPROVING A PROPOSED COLLECTIVE BARGAINING AGREEMENT WITH THE HOBBS POLICE DEPARTMENT 11 (2015) (on file with author) (giving officer access to "entire investigative file" for review purposes).

163 *See* CITY OF KANSAS CITY, MEMORANDUM OF AGREEMENT BETWEEN THE BOARD OF POLICE COMMISSIONERS OF KANSAS CITY, MISSOURI AND FRATERNAL ORDER OF POLICE LODGE NO. 99, at 9 (2014), https://www.lris.com/wp-content/uploads/contracts/kansas-city_mo_police.pdf [https://perma.cc/X9XA-ACKP] (giving officers access to video evidence and police reports).

164 *See* CITY OF PHOENIX, MEMORANDUM OF UNDERSTANDING: THE CITY OF PHOENIX AND PHOENIX LAW ENFORCEMENT ASSOCIATION 12 (2016), https://azplea.com/wp-content/uploads/2016/06/MOU-2016-2019.pdf [https://perma.cc/5428-GV6X] (stating that an officer gets access during an interview to "any material that is being used as the basis for an allegation of misconduct" including "video, audio, photographs, or documents").

165 *See* CITY OF AUSTIN, AGREEMENT BETWEEN THE CITY OF AUSTIN AND THE AUSTIN POLICE ASSOCIATION 51 (2013), http://austinpolice.com/contract/2016/FINAL%20AGREEMENT%20AS%20AMENDED.pdf [https://perma.cc/2QSA-C78U] (stating that an officer "shall be provided an opportunity to review any videotape, photograph, or other recording of the operative conduct or alleged injuries" before making a statement to an investigator).

166 *See* CITY OF FORT WORTH, MEET AND CONFER LABOR AGREEMENT BETWEEN CITY OF FORT WORTH, TEXAS AND FORT WORTH POLICE OFFICERS ASSOCIATION 18 (2017), https://apps.fortworthtexas.gov/council_packet/render_file.asp?filename=24652/MCA+2017%2D2020+Changes+Made+2+with+Salary+Schedule%2Epdf [https://perma.cc/JA8Q-FNHM] (ensuring that before an officer issues "a statement," he or she "will be allowed to review any dash cam or body cam videos, and Taser readouts in the investigator's possession").

167 *See* CITY OF LAREDO, COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF LAREDO, TEXAS AND THE LAREDO POLICE OFFICERS' ASSOCIATION 52 (2016), http://www.cityoflaredohr.com/files/Police_Signed_Contract16_20.pdf [https://perma.cc/BDP2-68PV] (giving officers access to "complaints, GPS/AVL readouts, video recordings, audio recordings, and photographs" related to the incident in question).

168 *See* CITY OF PORT ARTHUR, AGREEMENT BETWEEN CITY OF PORT ARTHUR, TEXAS AND THE PORT ARTHUR POLICE ASSOCIATION 34 (2008) (on file with author) (giving officer general right, with some exceptions, to inspect any material on file during an investigation).

169 *See* CITY OF SAN ANTONIO, AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, TEXAS AND THE SAN ANTONIO POLICE OFFICERS' ASSOCIATION 81 (2016) (on file with author) (giving officers access to a summary of the "general nature of the investigation," along with GPS/AVL

Again, it is important to remember that police union contracts are only one mechanism by which officers have been able to obtain access to incriminating evidence before an interrogation. In a significant number of locales, the state LEOBR provides officers with a similar privilege. For example, the LEOBR in Florida gives officers prior access to complaints, witness statements, and all existing evidence, including incident reports, GPS information, and audio or video recordings related to the incident.[171] Other LEOBRs, like that in Iowa, provide officers with a smaller amount of potentially incriminating information by only giving them access to "at a minimum" at least a "summary of the complaint."[172] And a larger number of LEOBRs merely require investigators to notify the officer of the "nature" of the allegation—a requirement that appears to be substantially lower than the requirement that investigators give officers details about a complaint.[173]

C. National Survey Results

While the data from the content analysis provides useful information on the commonality of various interrogation limitations, it fails to answer the empirical question at the heart of this discussion: Do these limitations on interrogation techniques impair the ability of investigators to uncover the truth or elicit incriminating statements? Respondents to our national survey of police leaders almost uniformly agree that these interrogation regulations may limit the ability of investigators to elicit incriminating information or otherwise make it difficult to uncover the truth. Table 3 summarizes the results of our national survey of police leaders.

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readouts, video recordings, audio recordings, photographs, written statements, complaints, and affidavits).

170 *See* CITY OF SAN MARCOS, MEET AND CONFER AGREEMENT BETWEEN SAN MARCOS POLICE OFFICERS' ASSOCIATION AND THE CITY OF SAN MARCOS, TEXAS 29 (2015), https://www.cleat.org/wp-content/uploads/2016/04/San-Marcos-2015-2018.pdf [https://perma.cc/6Y84-LXAE] (guaranteeing officers the ability to access complaints and other types of video or photographic evidence related to an allegation of misconduct).

171 FLA. STAT. ANN. § 112.532(1)(d) (West 2014).

172 IOWA CODE § 80F.1(5) (2018).

173 *See, e.g.*, CAL. GOV'T CODE § 3303(c) (West 2010) (giving officers right to know "nature of the investigation" before an interrogation); 45 ILL. COMP. STAT. § 725/3.2 (2016) (also giving officers knowledge of nature of investigation before interrogation); MD. CODE ANN., PUB. SAFETY § 3-104(d)(2) (LexisNexis 2011) (similarly allowing officers to know nature of investigations prior to interrogation); N.M. STAT. ANN. § 29-14-4(C)(2) (2013) (allowing officer to know nature of investigation); 42 R.I. GEN. LAWS § 42-28.6-2(5) (2007) (giving officers information on "nature" of complaint); VA. CODE ANN. § 9.1-501(2) (2018) (using same "nature of the investigation" language).

TABLE 3. POLICE LEADER OPINIONS ON INTERROGATION LIMITATIONS

Effect on Investigations	Interrogation Delays	Access to Evidence Before Interrogation
Frequently Burden Investigation	91.0% (142/156)	83.3% (130/156)
Occasionally Burden Investigation	7.7% (12/156)	14.1% (22/156)
Rarely Burden Investigation	1.3% (2/156)	2.6% (4/156)
Never Burden Investigation	0.0% (0/156)	0.0% (0/156)

Over 98% of survey respondents claimed that interrogation delays would either frequently or occasionally burden investigations. Similarly, 97% of survey respondents concluded that providing officers with evidence before an interrogation would either frequently or occasionally burden an investigation. No respondents felt that these kinds of procedural protections were costless—that is that they would never burden an investigation. Additionally, the overwhelming majority of survey respondents (97%) agreed that these limitations on interrogations did not reduce the likelihood of false confessions.

The survey instrument also gave respondents an opportunity to provide qualitative feedback. A number of respondents took this opportunity to elaborate on how these protections might affect investigations. Respondents worried that a 48-hour waiting period—the median waiting period given to officers across police union contracts and LEOBRs—provides suspects with a chance to "line up an alibi,"[174] "construct lies and rehearse,"[175] "strategize about how to conceal the truth,"[176] "get their lies in order,"[177] "destroy [or] hide evidence not already in police possession,"[178] "tamper with witnesses,"[179] or otherwise "give [a suspect] any advantage."[180] Multiple respondents suggested that "[t]he first 48 hours of an investigation are

174 Survey Response from Police Chief #1 (July 16, 2018) (on file with author).

175 Survey Response from Police Chief #4 (July 16, 2018) [hereinafter Survey #4] (on file with author).

176 Survey Response from Police Chief #30 (July 16, 2018) [hereinafter Survey #30] (on file with author).

177 Survey Response from Police Chief #35 (July 16, 2018) (on file with author). This response was mirrored by a number of other respondents. *See, e.g.*, Survey Response from Police Chief #103 (July 24, 2018) (stating that giving suspects evidence or notification of an interrogation would "give [the] suspect time to formulate answers").

178 Survey Response from Police Chief #47 (July 18, 2018) (on file with author).

179 *Id.*

180 Survey Response from Police Chief #14 (July 16, 2018) (on file with author).

critical," meaning that any significant delay "would contribute to many more cold cases, as well as increas[e] man hours in solving a case."[181] One respondent simply argued that, "the quicker you can get a suspect[] [into the interrogation room], the better you are."[182] And another respondent bluntly stated that a 48-hour waiting period before an interrogation would only help suspects "get away with something!"[183]

Respondents also expressed similar skepticism about any provision that allows suspects to access incriminating evidence against them before an interrogation. One police chief compared this proposal to "showing all of your cards in a poker game."[184] Another respondent claimed that "[s]howing [suspects] evidence in advance allows them to tailor their lies to fit the evidence," thereby reducing the "suspect's uncertainty about the investigation."[185] A number of respondents argued that the purpose of an interrogation is to "determine if the suspect is being truthful."[186] Thus, providing a suspect with the evidence in advance of an interrogation "would greatly limit this position,"[187] and as one respondent put it, would give suspects "time to fabricate a better lie."[188] And at least one respondent worried that this kind of a provision may inadvertently publicize evidence, thereby calling into question the "integrity of the investigation."[189]

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181 Survey Response from Police Chief #37 (July 16, 2018) (on file with author); *see also* Survey Response from Police Chief #100 (July 24, 2018) [hereinafter Survey #100] (on file with author) (stating that "[t]ime is often critical for investigations").

182 Survey Response from Police Chief #5 (July 16, 2018) (on file with author).

183 Survey Response from Police Chief #50 (July 18, 2018) (on file with author). For a similar response, see Survey Response from Police Chief #110 (July 24, 2018) (on file with author) (suggesting that this proposal would not be a "service to all victims").

184 Survey Response from Police Chief #111 (July 24, 2018) (on file with author). Another police chief made a similar comparison in detailed qualitative feedback. Survey Response from Police Chief #124 (July 24, 2018) (on file with author) ("Giving suspects access to incriminating evidence before an interrogation would be the same as playing poker with your cards laid out on the table for all to see.").

185 Survey #4, *supra* note 175.

186 Survey Response from Police Chief #11 (July 16, 2018) [hereinafter Survey #11] (on file with author); *see also* Survey #100, *supra* note 181.

187 Survey #11, *supra* note 186.

188 Survey Response from Police Chief #46 (July 16, 2018) (on file with author); *see also* Survey #100, *supra* note 181 (stating that "withholding evidence before interrogation helps determine if [a] suspect has knowledge of [the] crime in question"); Survey Response from Police Chief #104 (July 24, 2018) (stating that the "element of surprise and knowledge of the investigator's information is a tool used to provide the investigator with the ability to detect untruthfulness in a suspect['s] statement"); Survey Response from Police Chief #105 (July 24, 2018) (on file with author) (expressing concern that this protection allows suspects to "pull a story together" and to "cover the truth with a more comprehensive lie").

189 Survey #30, *supra* note 176.

Other police chiefs offered mixed assessments in their qualitative responses. For example, one police chief noted that "[e]ach investigator will have their own method."[190] Another police chief worried more about the impact of these provisions on a suspect's willingness to "cooperate."[191] And a different police chief conceded that these protections may contribute to a greater sense of procedural justice among suspects, which "could help elicit coordination" and thus "be of value."[192]

Overall, though, the survey responses were remarkably consistent. As one chief bluntly put it, "[s]uch proposals would virtually nullify the need to interrogate . . . suspects, as such proposals would make it impossible for investigators to glean more information."[193] Police leaders from all parts of the country expressed widespread concern that these protections would impair the ability of investigators to uncover the truth. And virtually no police chief felt that these protections were useful in reducing the rate of false confessions.

D. Implications for Literature on Police Reform

These findings have important implications for the study of police reform and criminal procedure. These findings reinforce the need for continued scholarly discussion of how labor and employment law incidentally affect police reform efforts.[194] Policing scholars have written extensively on the use of external legal mechanisms to reform the nation's police departments. An extensive body of scholarship has discussed the effectiveness of the exclusionary rule,[195] civil liability via 42

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190 Survey Response from Police Chief #24 (July 16, 2018) (on file with author).

191 Survey Response from Police Chief #114 (July 24, 2018) (on file with author).

192 Survey Response from Police Chief #18 (July 16, 2018) (on file with author).

193 Survey Response from Police Chief #44 (July 18, 2018) (on file with author). These statements roughly mirror some of the most impassioned responses we received in our qualitative data, such as one chief's statement that, "[t]hese are crazy!" and also that "[i]f our profession (lawmakers) go with [these proposals], good by [sic] America!!" Survey Response from Police Chief #76 (July 18, 2018) (on file with author).

194 *See generally* Seth W. Stoughton, *The Incidental Regulation of Policing*, 98 MINN. L. REV. 2179 (2014) (discussing how various laws incidentally affect policing, including labor and employment law).

195 The United States Supreme Court first adopted the exclusionary rule in 1914 in *Weeks v. United States*, but limited its application to federal law enforcement agents. *See* 232 U.S. 383, 398 (1914) (establishing the exclusionary rule but limiting its reach to apply only to illegally obtained evidence by federal agency officials), *overruled by* Mapp v. Ohio, 367 U.S. 643, 643 (1961). Then, in 1961, in *Mapp*, the Court extended the exclusionary rule to state and local law enforcement agents. *Mapp*, 367 U.S. at 643, 655 (holding that the exclusionary rule applies to "all evidence obtained by searches and seizures in violation of the Federal Constitution" including by state and local law enforcement officials). In *Silverthorne Lumber Co. v. United States*, the

U.S.C. § 1983,[196] and criminal prosecution[197] in promoting constitutional policing.[198] The rationale behind these traditional policing regulations is straightforward. If an officer commits an act of misconduct, there are legal avenues to punish the officer or the police department. By creating a risk of penalty, these laws should deter individual officers from engaging in misconduct. And at a more general level, the possibility of sanctions should motivate a rational police department to implement rigorous oversight and disciplinary systems to prevent officer misconduct.

But for decades, scholars have worried that these external mechanisms may be insufficient to bring about sustainable reform within police departments. So why have these mechanisms failed to achieve their intended goals? Scholars have offered a wide range of answers. Some scholars have pointed out the various exceptions and loopholes under existing law. For example, the exclusionary rule is riddled with exceptions that prevent its application in cases of clear officer miscon-

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Court further expanded the exclusionary rule to apply to copies of illegally obtained evidence as well as original forms of evidence obtained by searches and seizures in violation of the Constitution. *See* 251 U.S. 385, 391–92 (1920). The Court, in *Elkins v. United States*, explained that the purpose of the exclusionary rule is to "deter" law enforcement officials from obtaining evidence that violates an individual's Constitutional rights and "to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it." 364 U.S. 206, 217 (1960).

196 This is the primary way that victims of police misconduct can bring a civil suit against a police officer and/or a police department in federal court when a police officer deprives an individual of their constitutional rights. *See* 42 U.S.C. § 1983 (2012) ("Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding . . . .").

197 The federal government can prosecute police officers suspected of misconduct under 18 U.S.C. § 242, which provides that "[w]hoever, under color of any law . . . willfully subjects any person in any State . . . to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States . . . shall be fined . . . or imprisoned . . . ." 18 U.S.C. § 242 (2012).

198 This list does not include the use of federal consent decrees in bringing about police reform. Congress provided the power to the Department of Justice to bring structural reform litigation against police departments engaged in the practice of unconstitutional misconduct under 42 U.S.C. § 14141 (recodified at 34 U.S.C. § 12601). Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 210401, 108 Stat. 1796, 2071. For more information on the application of this statute, see generally Stephen Rushin, *Federal Enforcement of Police Reform*, 82 FORDHAM L. REV. 3189 (2014) (evaluating how the Department of Justice has enforced § 14141 over time); Kami Chavis Simmons, *The Politics of Policing: Ensuring Stakeholder Collaboration in the Federal Reform of Local Law Enforcement Agencies*, 98 J. CRIM. L. & CRIMINOLOGY 489 (2008) (discussing how the Department of Justice could reform its approach to overhauling local police departments to ensure greater community involvement).

duct.[199] Various commentators have observed that legal barriers make it difficult for these external mechanisms to be used regularly in response to officer misconduct. For example, the qualified immunity doctrine protects officers against some civil suits under § 1983[200] and litigants must often make a relatively difficult factual showing in order to hold a police department responsible for the conduct of its officers.[201] Some have noted that these mechanisms are underenforced.[202] A few scholars have demonstrated that these mechanisms

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199 *See, e.g.*, James v. Illinois, 493 U.S. 307, 309 (1990) (limited the impeachment exception solely to the testimony of the criminal defendant, not any other defense witness); Nix v. Williams, 467 U.S. 431, 445–48 (1984) (establishing the inevitable discovery exception, which allows illegally obtained evidence that would have been inevitably discovered through legal avenues to be admissible); Wong Sun v. United States, 371 U.S. 471, 485 (1963) (establishing the independent source exception, which inquires whether the evidence was obtained through a violation of an individual's Fourth Amendment right or through an independent source); Walder v. United States, 347 U.S. 62, 65 (1954) (establishing the impeachment exception, which allows the government to impeach a defendant who perjures himself on direct examination during cross examination with illegally obtained evidence). For more information on exceptions to the exclusionary rule, see generally Heather A. Jackson, Arizona v. Evans: *Expanding Exclusionary Rule Exceptions and Contracting Fourth Amendment Protection*, 86 J. CRIM. L. & CRIMINOLOGY 1201, 1204–10 (1996). Another reason the exclusionary rule lacks effectiveness to prevent and solve police misconduct is because of the high number of guilty pleas in the U.S. criminal justice system compared to convictions from criminal trials. *See* Jason Mazzone, *The Waiver Paradox*, 97 Nw. U. L. REV. 801, 831–33 (2003).

200 *See* Ashcroft v. al-Kidd, 563 U.S. 731, 735 (2011) ("Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982))); Hope v. Pelzer, 536 U.S. 730, 739 (2002) (establishing the "clearly established" law standard for qualified immunity cases); Forrester v. White, 484 U.S. 219, 223 (1988) (explaining that "[w]hen officials are threatened with personal liability . . . they may . . . be induced to act with an excess of caution . . . in ways that result in less than full fidelity to the objective and independent criteria that ought to guide their conduct").

201 City of Canton v. Harris, 489 U.S. 378, 379 (1989) (the Court found that the "inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train in a relevant respect amounts to deliberate indifference to the constitutional rights of persons with whom the police come into contact"); Monell v. Dep't of Soc. Servs., 436 U.S. 658, 700–01 (1978) (holding that a police department or municipality can be held liable for the actions of a police officer who violates a civil claimant's constitutional rights under § 1983).

202 Take, for example, the lack of criminal prosecutions against police officers involved in uses of deadly force, even against unarmed suspects. First, a number of scholars have discussed the conflicts of interest inherent in a prosecutor investigating and bringing charges against a police officer. *See, e.g.*, Jacobi, *supra* note 41, at 803–04 (explaining the conflicts of interest within police departments that may lead to choices not to prosecute officers); *see also* Kate Levine, *Who Shouldn't Prosecute the Police*, 101 IOWA L. REV. 1447, 1447 (2016) (observing the conflicts of interest that prosecutors generally have when bringing charges against police officers); Kate Levine, *How We Prosecute the Police*, 104 GEO. L.J. 745, 745 (2016) (observing how often prosecutors engage in thorough precharge investigations of police officers and present exculpatory evidence to a grand jury, and arguing that such a procedure ought to extend to all

operate on faulty assumptions about who pays for officer misconduct and how departments internalize these costs.[203] And still others have shown that, often because of the structure of local government, police departments may not respond rationally (at least in an economic sense) by implementing reforms in response to increased external costs.[204]

An emerging body of literature, though, is beginning to demonstrate how labor and employment law protections may also complicate police reform. Several scholars and commentators have recently argued that labor and employment laws can prevent supervisors from adequately investigating and punishing officers accused of misconduct.[205] The findings from this Article build on this emerging literature. They suggest that, even when police leaders have strong external legal incentives to combat unconstitutional police behavior, labor protections may impede their ability to investigate officer misconduct and take necessary disciplinary action. More generally, these findings should encourage future scholars to focus more attention on how internal departmental policies and procedures may impair police accountability efforts.

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suspects). Second, others have argued that juries are less likely to convict a police officer than a similarly situated civilian. *See, e.g.*, Project, *Suing the Police in Federal Court*, 88 YALE L.J. 781, 783 (1979) ("[J]uries . . . are not impartial because many jurors disfavor plaintiffs and favor police defendants in these suits[,] and . . . adverse verdicts have minimal effect on defendants because police departments and police officers are insulated from the consequences of the suits."). Finally, emerging evidence suggests that police officers rarely face charges after deadly use of force. *See, e.g.*, Madison Park, *Police Shootings: Trials, Convictions Are Rare for Officers*, CNN (updated Oct. 3, 2018, 4:41 PM), https://www.cnn.com/2017/05/18/us/police-involved-shooting-cases/index.html [https://perma.cc/QHK9-DYAY].

203 *See, e.g.*, John Rappaport, *How Private Insurers Regulate Public Police*, 130 HARV. L. REV. 1539, 1540 (2017) (describing how the market for liability insurance affects police reform); Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U. L. REV. 885, 912 (2014) ("Officers financially contributed to settlements or judgments in approximately .41% of those cases" between 2006 and 2011 in approximately 9,225 civil rights cases).

204 *See* Samuel Walker & Morgan Macdonald, *An Alternative Remedy for Police Misconduct: A Model State "Pattern or Practice" Statute*, 19 GEO. MASON U. CIV. RTS. L.J. 479, 495 (2009) ("Essentially, one agency of government, the police department, commits abuses of rights, another agency, the city attorney's office, defends the conduct in court, and a third agency, the city treasurer, pays whatever financial settlement results from the litigation. Missing from this scenario is an overarching sense of responsibility on the part of any agent or agency of local government, presumably the mayor or city council, which would pursue improvements in the police department as a means of reducing the costs of litigation.").

205 *See supra* Part II.

V. Reforming Police Interrogation Procedures

The data from this Article suggests that police union contracts and LEOBRs have insulated many police officers in the United States from accountability by preventing investigators from using effective interrogation techniques against them during internal disciplinary investigations. Nearly a quarter of all police departments in our dataset provide police officers with lengthy delays before interrogations, and an even larger number of agencies give officers access to some or all incriminating evidence against them in advance of interrogations. Data from our national survey shows that police leaders widely believe that these interrogation regulations substantially burden investigations or otherwise prevent investigators from eliciting incriminating information. Virtually no police leaders believe that these limitations are useful in reducing false confessions.

Municipalities should develop officer interview procedures that carefully balance the need for due process with the need for legitimate investigations of suspected misconduct. Unfortunately, it appears that many police departments are not striking such a careful balance. Too often municipalities give officers overly generous protections from interrogations that limit accountability. By drawing on the data presented in this Article, as well as leading interrogation manuals,[206]

206 Specifically, we consider interrogation training material sold commercially by John E. Reid & Associates, one of the largest providers in the United States of training in interrogation techniques for law enforcement officials. *See generally Training Programs*, John E. Reid & Assocs., Inc., http://www.reid.com/training_programs/r_training.html [https://perma.cc/YP8Y-3FXK]. According to the website, the company has had "[m]ore than 500,000 professionals in the law enforcement and security fields" attend their interrogation training programs since 1974. *Id.* Reid and Associates offer a wide range of interrogation training materials to law enforcement. Additionally, their website contains testimonials from law enforcement officers across the United States, who have attended one of the training programs on their website. For example, their website quotes Mack Rayburn of the Kentucky State Police as saying, "I have been using the Reid Technique since the training. I have been very successful using this technique. I got a confession two days after the training. I also got a confession from a 'long-time' sexual offender. He had been investigated many times over a 20-year period—with no one obtaining a confession until I used the Reid Technique on him." *General Comments*, John E. Reid & Assocs., Inc., https://www.reid.com/success_reid/r_comments.html. The website quotes Sergeant J. Richard Ward of the Charlottesville, Virginia Police Department as saying, "As a training coordinator I see a big difference in the cases solved by those that have attended the Reid seminar. We send every investigator to your classes." *Id.* There are several more testimonials from law enforcement officials who have used the Reid method of interrogation on the website. *Id.* Further, "[t]he Virginia Department of Criminal Justice Services has approved the following Reid programs: '3-day seminar on The Reid Technique of Interviewing and Interrogation[,] Approved for 18 hrs,' '3-day seminar on The Reid Technique of Investigative Interviewing for Child Abuse Investigations[,] Approved for 18hrs' [and the] '1-day seminar on The Advanced course on The Reid Technique of Interviewing and Interrogation[,] Approved for 6hrs.'" *POST*, John E. Reid

we have four recommendations for how state and local legislators should regulate interrogations of police officers in the future.

A. Recognizing Humane Limitations on Officer Interrogations

To begin with, police departments should provide officers with reasonable protections against unduly coercive or abusive interrogations. These protections ought to include: (1) bans on abusive language and excessively long interrogations, (2) requirements that officers have reasonable access to food and water during long interrogations (3) guarantees that, except in exigent circumstances, investigators will conduct interrogations during work hours, and (4) a reasonable opportunity for officers to obtain legal counsel or union representation, particularly in cases of custodial interrogation.

A large number of communities adopt these sorts of basic prohibitions against unreasonably coercive or harmful techniques during officer interrogations. For example, communities like Honolulu, Hawaii,[207] San Diego, California,[208] and Wichita, Kansas,[209] provide

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& Assocs., Inc., https://www.reid.com/educational_info/r_post.html?serial=37 [https://perma.cc/3DQT-F4ZQ]. In addition, we also consider three other interrogation manuals. *See* John M. Macdonald & David L. Michaud, The Confession: Interrogation and Criminal Profiles for Police Officers (1987); Charles E. O'Hara & Gregory L. O'Hara, Fundamentals of Criminal Investigation (7th ed. 2003); Robert F. Royal & Steven Schutt, The Gentle Art of Interviewing and Interrogation: A Professional Manual and Guide (1976). A number of states recommend or require that officers utilize this interrogation training material. Specifically, there are state-level authorities in more than 21 states, including Arizona, Maryland, Michigan, and North Carolina, who have approved one or more of Reid & Associates' interrogation trainings for its law enforcement officials, according to the POST section of their website. *POST*, John E. Reid & Assocs., Inc., *supra*.

207 *See* State of Hawaii, Agreement Between State of Hawaii, City & County of Honolulu, County of Hawaii, County of Maui, County of Kauai and State of Hawaii Organization of Police Officers Bargaining Unit 12, at 21 (2011), https://static1.squarespace.com/static/559fbf2be4b08ef197467542/t/5679f3dd7086d7e97534ae1c/1450832861111/Honolulu+Police+Contract.pdf [https://perma.cc/6GCR-KW4J] (giving officers access to personal necessities and limiting inhumane abuses during interrogation).

208 *See* City of San Diego, Memorandum of Understanding By and Between City of San Diego and San Diego Police Officers Association 49 (2015), https://www.sandiego.gov/sites/default/files/legacy/humanresources/pdf/fy16poamou.pdf [https://perma.cc/H7D8-BW9H] (ensuring officers can tend to personal necessities like bathroom use and providing the kind of limits described in this Part).

209 See City of Wichita, Memorandum of Agreement By and Between the City of Wichita, Kansas and Fraternal Order of Police Lodge #5, Wichita, Kansas, Inc. 38 (2017), http://www.wichita.gov/HR/HRDocuments/2017-2018%20FOP%20Contract%20-%20EFF%2012.16.2017%20thru%2012.15.2018.pdf [https://perma.cc/3X7X-7S7H] (stating that "the interview shall be completed as soon as possible. Time may be provided for personal necessities, meals, telephone calls, and rest periods, as appropriate" and further explaining that "[n]o offensive language, coercion or promise of reward as an inducement to answering questions shall be directed at the employee").

such reasonable and humane limitations. Through our review of leading interrogation manuals, we have been unable to locate any persuasive evidence that interrogators need to utilize tactics that violate these principles in order to uncover the truth. There is also compelling empirical research to suggest that these tactics may contribute to false confessions or the elicitation of unreliable information.[210] This may be part of the reason that leading interrogation manuals urge officers not to use many of these tactics, for fear that they may elicit false confessions.[211]

Outside of their likely ineffectiveness in eliciting incriminating information, coercive tactics that violate these norms may have harmful downstream consequences on a workplace. Employees may understandably view such tactics as procedurally unjust. And such inhumane tactics may also irreparably harm the relationship between employees and an employer. Thus, we believe explicitly memorializing these kinds of procedural protections "respect the officer as an individual and as an employee, aid in the search for truth, and pose no barrier to accountability."[212] While some civil rights advocates have taken issue with these sorts of protections, we are of the belief that these protections should be extended to both civilians and police officers facing any kind of custodial interrogation or interview.[213]

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210 For example, recent empirical studies identified that police conducting lengthy interrogations on civilians is one of the interrogation practices that are "most likely to precipitate untrustworthy confessions." Welsh S. White, *What is an Involuntary Confession Now?*, 50 RUTGERS L. REV. 2001, 2042–43 (1998) (pointing to a study by Leo and Ofshe of "sixty known and probable false confession cases" that identified conducting lengthy interrogations as one of the two interrogation tactics that was used most often in the sixty-case sample that played a "major part" in civilian suspects providing "untrustworthy confessions"); *see also* Richard A. Leo & Richard J. Ofshe, *The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation*, 88 J. CRIM. L. & CRIMINOLOGY 429 (1998). One empirical study conducted by Leo and Ofshe provides ample data support for the "conclusion that lengthy interrogations are likely to cause untrustworthy confessions." White, *supra*, at 2046. Leo and Ofshe's study highlighted how one suspect was interrogated for over nine hours continuously by police officers. *Id.* at 2046–47. Admittedly, there is no set length of an interrogation that will automatically produce an involuntary confession under the Constitution. But again, this does not change our opinion that such tactics are normatively undesirable for all suspects.

211 *See* INBAU ET AL., *supra* note 12, at xi (warning officers against "use of force, threats of force, or promises of leniency," because they may contribute to false confessions).

212 Keenan & Walker, *supra* note 48, at 218.

213 *See generally* Levine & Rushin, *supra* note 52 (arguing for the extension of some equal protections to both police officers and civilians undergoing custodial interrogations).

B. Differentiating Between Criminal and Administrative Investigations

Additionally, states and localities should provide officers with different levels of procedural protections during interrogations depending on the seriousness of the alleged misconduct. Specifically, policymakers would be wise to distinguish between investigations of criminal conduct and investigations of mere disciplinary violations. When the stakes are relatively low, it may be unwise as a policy matter for an employer to use coercive interrogation techniques to elicit information from an employee.

But when the stakes are particularly high—as in cases where a department believes that an officer has used deadly force against a civilian unlawfully—departments should have more latitude to treat officers in a manner consistent with criminal suspects. Several communities make such an explicit distinction in regulating disciplinary interrogations, including Albuquerque, New Mexico,[214] Fairbanks, Alaska,[215] Memphis, Tennessee,[216] and Minneapolis, Minnesota.[217]

For example, Fairbanks has a contractual term that explicitly provides that if a member of the union is subject to a criminal investigation "this Department shall not afford him/her any greater or lesser rights than are enjoyed by other citizens of this City and State when subject to criminal investigations or proceedings."[218] Not all collective bargaining agreements or LEOBRs make such a clear delineation. This may result in police officers under criminal investigation receiv-

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214 *See* CITY OF ALBUQUERQUE, *supra* note 135, at 30 (describing how the procedural approach should differ if "a member is under arrest or is likely to be; that is, if he/she is a suspect or the target of a criminal investigation").

215 *See* THE CITY OF FAIRBANKS, COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF FAIRBANKS AND THE PUBLIC SAFETY EMPLOYEES ASSOCIATION, FAIRBANKS POLICE DEPARTMENT CHAPTER 17 (2011), http://www.psea.net/wp-content/uploads/2015/02/2011-City-PSEA-CBA-agreement-04-03-12-3.pdf [https://perma.cc/T5N4-4Y4J] (describing the lesser protections afforded to an officer facing criminal investigations).

216 *See* CITY OF MEMPHIS, AGREEMENT BETWEEN THE MEMPHIS POLICE ASSOCIATION AND THE CITY OF MEMPHIS, TENNESSEE 16 (2011), https://static1.squarespace.com/static/559fbf2be4b08ef197467542/t/56771372cbced60a23745ad4/1450644338865/Memphis+Police+Contract.pdf [https://perma.cc/W3QW-BYZF] (distinguishing between procedures for internal investigations and criminal investigations).

217 CITY OF MINNEAPOLIS, THE CITY OF MINNEAPOLIS AND THE POLICE OFFICERS' FEDERATION OF MINNEAPOLIS: LABOR AGREEMENT, POLICE UNIT 12–13 (2017), http://www.minneapolismn.gov/www/groups/public/@hr/documents/webcontent/wcmsp-200131.pdf [https://perma.cc/VT7W-9AVN] (explaining how, while usual summary reports are given to officers before internal interviews, this requirement can be waived if it would endanger a criminal investigation).

218 *See* CITY OF FAIRBANKS, *supra* note 215, at 17.

ing heightened protections above and beyond those given to civilians under criminal investigation.

C. Limiting Rigid Delay Provisions

Next, states and localities should only provide officers with a reasonable period of time to secure counsel or representation before an internal investigatory interview. As we discussed in more detail in Part III, there may be situations when police departments need to delay interrogations for various legal and policy reasons. Officers, like any other person, are constitutionally entitled to legal representation if subject to a custodial interrogation in which investigators attempt to elicit incriminating information that could lead to criminal charges.[219] Additionally, as part of an internal investigation, police departments will frequently compel officers to answer questions. Failure to answer these questions may result in disciplinary action or termination. Under such circumstances, the U.S. Supreme Court has held that police may not use such compelled answers as evidence against an officer in future criminal proceedings.[220]

Thus, because police misconduct may frequently overlap with criminal conduct, it seems prudent and necessary as a legal matter for police departments to give officers a reasonable amount of time to secure representation before an investigatory interview. However, our data suggests that many police union contracts and LEOBRs do more than provide officers with a reasonable period of time to secure representation. Many guarantee officers a rigid and lengthy delay before interrogations, regardless of the circumstances. To use the language of previous scholars, these types of waiting periods are "intolerable," because they may "allow officers time to collude to create a consistent, exculpatory story."[221]

As several police leaders noted in their qualitative answers to our survey, a rigid waiting period gives suspects "time to fabricate a lie."[222] Some respondents worried that these kinds of delays can "severly [sic] hinder the ability [of investigators] to determine a suspects [sic] credibility and truthfulness."[223] Others worried that "[g]iving advanced notice would potentially allow suspects to change stories or get with

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219 Miranda v. Arizona, 384 U.S. 436, 479 (1966).

220 Garrity v. New Jersey, 385 U.S. 493, 499–500 (1967).

221 Keenan & Walker, *supra* note 48, at 212.

222 Survey Response from Police Chief #48 (July 18, 2018) [hereinafter Survey #48] (on file with author).

223 Survey Response from Police Chief #55 (July 18, 2018) (on file with author).

others to match stories."[224] This criticism seems especially salient when investigating allegations of police misconduct, particularly cases involving multiple officers. In these cases, federal consent decrees in cities like Los Angeles,[225] Seattle,[226] New Orleans,[227] and Albuquerque[228] have explicitly required investigators to report to the scene of serious use of force incidents as soon as possible to interview all individuals involved separately, so as to prevent officers from "conspiring to create a story that exonerates any and all officers of misconduct."[229]

By giving officers 48 hours or more of advanced notification of a planned interrogation, some police departments effectively prevent investigators from using such tactics against police suspects. These jurisdictions give officers ample opportunity to coordinate stories.

Rather than offering lengthy and rigid interrogation delays, states and localities should look to the example of language from the union contracts in most American cities like Hialeah, Florida,[230] Green Bay, Wisconsin,[231] and New Haven, Connecticut,[232] or the LEOBRs in Cali-

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224 Survey Response from Police Chief #61 (July 18, 2018) (on file with author).

225 Consent Decree at 23–25, United States v. City of Los Angeles, No. 00-cv-11769 (C.D. Cal., June 15, 2001), http://www.clearinghouse.net/chDocs/public/PN-CA-0002-0006.pdf [https://perma.cc/KZT5-TEFN] (requiring supervisors to report to the scene of serious uses of force and immediately separate officers before taking statements).

226 *See* Settlement Agreement and Stipulated [Proposed] Order of Resolution at 25–28, United States v. City of Seattle, No. 12-cv-01282 (W.D. Wash., July 27, 2012), http://www.justice.gov/crt/about/spl/documents/spd_consentdecree_7-27-12.pdf [https://perma.cc/ZA2S-Y3JQ] (requiring supervisors to report to the scene after an officer use-of-force situation that results in injury and separately interview officers as soon as feasible).

227 *See* Consent Decree at 25–26, United States v. City of New Orleans, No. 12-cv-01924 (E.D. La., July 24, 2012), http://www.clearinghouse.net/chDocs/public/PN-LA-0001-0001.pdf [https://perma.cc/D8WB-XLR9] (requiring supervisors to arrive on scene, separate officers, and take statements after certain use-of-force incidents).

228 *See* Settlement Agreement at 22–25, United States v. City of Albuquerque, No. 1:14-cv-1025 (D.N.M., Nov. 14, 2014), https://www.justice.gov/sites/default/files/crt/legacy/2014/12/19/apd_settlement_11-14-14.pdf [https://perma.cc/6VH8-PK47] (requiring supervisors to separate officers at scene of use-of-force incident to take contemporaneous statements).

229 Walker, *supra* note 73, at 3.

230 *See* City of Hialeah, Agreement Between City of Hialeah, Florida and Dade County Police Benevolent Association 30 (2013), https://static1.squarespace.com/static/559fbf2be4b08ef197467542/t/567639f6e0327c06bccfca10/1450588662114/Hialeah+Police+Contract.pdf [https://perma.cc/ML65-XVZT] (providing officers with opportunity to secure representation, but not articulating a rigid waiting period to allow this to happen).

231 *See* City of Green Bay, *supra* note 161, at 49 (giving officer opportunity to secure representation, but not providing for a strict waiting period).

232 *See* City of New Haven, Agreement Between the City of New Haven and the New Haven Police Union, Lodge 530, and Council 15, AFSCME, AFL-CIO 63 (2011) (on file with author) (providing officer chance to secure representation without giving a rigid waiting period).

fornia,[233] Delaware,[234] Florida,[235] Iowa,[236] and Wisconsin,[237] which merely grant officers a reasonable or limited period of time to obtain representation before investigators may begin interrogations.

D. Limiting the Amount of Evidence Given to Officers in Advance of Interrogations

Finally, police departments should limit officers' access to evidence in advance of an investigatory interview into serious misconduct—particularly evidence that may give officers an opportunity to construct a false story and avoid responsibility. In this way, providing officers with access to civilian complaints, witness names, video evidence, photographic evidence, and locational evidence may significantly hamper the ability of internal investigators to elicit incriminating statements. In our judgment, giving officers a general summary of the purpose of an interview should be sufficient to reasonably apprise them of the purpose of a compelled interview. A large number of communities have reached a similar conclusion, including Columbus, Ohio,[238] Indianapolis, Indiana,[239] and Omaha, Nebraska.[240]

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233 CAL. GOV'T CODE § 3303(i) (West 2010) ("Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation.").

234 DEL. CODE ANN. tit. 11, § 9200(c)(9) (2015) ("Upon request, any officer under questioning shall have the right to be represented by counsel or other representative of the officer's choice, who shall be present at all times during the questioning unless waived in writing by the investigated officer. The questioning shall be suspended for a period of time if the officer requests representation until such time as the officer can obtain the representative requested if reasonably available.").

235 FLA. STAT. ANN. § 112.532(1)(i) (West 2014) ("At the request of any law enforcement officer or correctional officer under investigation, he or she has the right to be represented by counsel or any other representative of his or her choice, who shall be present at all times during the interrogation whenever the interrogation relates to the officer's continued fitness for law enforcement or correctional service.").

236 IOWA CODE § 80F.1(8) (2018) ("The officer shall have the right to have legal counsel present, at the officer's expense, during the interview of the officer.").

237 WIS. STAT. ANN. § 164.02(1)(b) (West 2016) ("At the request of any law enforcement officer under interrogation, he or she may be represented by a representative of his or her choice who, at the discretion of the officer, may be present at all times during the interrogation.").

238 *See* CITY OF COLUMBUS, AGREEMENT BETWEEN CITY OF COLUMBUS AND FRATERNAL ORDER OF POLICE, CAPITAL CITY LODGE NO. 9, at 16 (2014), https://s3.amazonaws.com/odx-serb-input-content/PDF/Contracts/2014/14-MED-08-1031.pdf [https://perma.cc/XPR6-VP6S] ("The member being investigated shall be given a copy of any citizen complaint or a written summary of the allegations and any known basic facts of the incident of any non-citizen complaint prior to any questioning.").

239 *See* CITY OF INDIANAPOLIS, AGREEMENT BETWEEN THE CITY OF INDIANAPOLIS AND THE FRATERNAL ORDER OF POLICE, LODGE #86, at 10 (2014) (on file with author) (explaining

This distinction is grounded in the best available evidence from leading interrogation manuals,[241] as well as common sense. By giving officers access to incriminating evidence before an interrogation, many departments give officers ample opportunity to construct a fabricated story and deflect responsibility. Such generous provisions may also impede one of the most common interrogation techniques used by law enforcement across the country. As one leading interrogation manual explains, investigators can use the presence of incriminating evidence to their advantage during an interrogation—particularly if investigators do not allow a suspect to know about the discovery of the evidence.[242] To do this, one manual states that investigators should "avoid mentioning specific evidence against the suspect or contradictions in the suspect's earlier statement during the initial contact" with a suspect.[243] Instead, the manual recommends that officers remind suspects at the beginning of an interrogation that "there are independent means to detect any lies told," including the presence of physical evidence recovered as part of the investigation.[244] Thereafter, investigators can use their knowledge of existing physical evidence to "[t]rap[] the [s]ubject in a [l]ie."[245] This is "where the investigator knows what a truthful answer should be to a certain question, but [the investigator] asks it in a manner that implies a lack of knowledge."[246]

As an example, the manual describes a situation where an officer knows that a robbery suspect made a substantial payment on a personal loan or deposited a large sum of money into the bank under a fictitious name. Rather than directly confronting the suspect with this evidence, the manual recommends that the officer ask the suspect the following question: "Except for your salary (or other usual income) have you come into possession of any other money recently?"[247] If the suspect "readily admits he has, and offers a satisfactory explanation of it, such a disclosure may serve to exonerate him from further suspi-

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that in some cases, officers will receive an oral summary of the allegation before an interrogation).

240 *See* CITY OF OMAHA, AGREEMENT BETWEEN THE CITY OF OMAHA, NEBRASKA AND THE OMAHA POLICE OFFICERS ASSOCIATION 12–13 (2014) (on file with author) (stating that an officer should receive notice of the nature of the investigation in advance of an interview).

241 *See supra* note 206 (summarizing some of the interrogation manual material considered by this Article).

242 *See* INBAU ET AL., *supra* note 12, at 171–75.

243 *Id.* at 75.

244 *Id.* at 79.

245 *Id.* at 178.

246 *Id.*

247 *Id.* at 178–79.

cion."[248] But if the suspect lies, this may be a "strong indication of possible guilt."[249] And once an investigator has caught a suspect in a lie, the manual claims that the "subject will have considerable difficulty avoiding telling the rest of the truth."[250]

But by giving officers extensive access to incriminating evidence against them, many police union contracts and some LEOBRs effectively eliminate (or sharply curtail) the ability of officers to utilize these techniques.[251] Survey respondents reiterated this fact in their qualitative responses. As one chief put it, providing suspects with access to evidence before an interrogation would make it difficult for investigations to "determine truth of statements" or "check to see if timelines are correct."[252]

Conclusion

Police officers deserve adequate procedural protections during internal investigations. These include reasonable regulations to protect the dignity and constitutional rights of officers. Nevertheless, these protections should not become so burdensome that they impair the ability of investigators to conduct thorough investigations. As is often the case in regulating police officers, it can be difficult to strike a reasonable balance.

Even so, it is impossible to ignore the obvious asymmetry between the limited procedural protections given to civilians during custodial interrogations and the generous protections afforded to officers facing similar interrogations. Civilian interrogations are designed to be psychologically coercive. Investigators often lie, mislead, trick, and even discuss nonexistent evidence with civilian suspects.[253] By contrast, many police union contracts and police officer bills of rights ban some or all of these same tactics when officers face interrogations about alleged misconduct. As this Article demonstrates, a substantial number of police departments provide officers with rigid waiting peri-

248 *Id.* at 179.

249 *Id.*

250 *Id.*

251 This Article takes no position on all forms of deception during interrogations. Some contracts attempt to limit any form of deception by law enforcement. For example, some contracts, like those in Phoenix, go as far as explicitly stating that investigators may not "knowingly misrepresent any fact or material issue to the unit member." *See* City of Phoenix, *supra* note 164, at 12. While this may be overly broad and prevent legitimate investigative techniques, we take no position on the general topic of deception in interrogations.

252 Survey #48, *supra* note 222.

253 *See supra* Section I.A.

ods before an interrogation. And many others give officers access to some or all incriminating evidence against them before questioning. Respondents to our national survey widely believe that these restrictions impair legitimate investigations. These kinds of provisions stack the deck in favor of police officers and may make it difficult to uncover the truth.

Changing these internal policies will be an uphill battle. It will require communities to renegotiate collective bargaining agreements and state legislators to make substantial amendments to LEOBRs. Given the political strength of police unions,[254] this may seem impossible. But recent progress suggests otherwise. Over the last few years, activists have pushed lawmakers in states like Maryland and Louisiana to make modest alterations to their LEOBRs.[255] Similarly, activists in cities like Austin[256] and Chicago[257] have demanded the renegotiation of police union contracts. These represent important and necessary reforms to ensure that police officers remain accountable to the communities they serve.

254 Fisk & Richardson, *supra* note 67, at 744–47 (describing police unions and the political process).

255 *See, e.g.*, Ovetta Wiggins, *After Baltimore Riots, Changes to Police 'Bill of Rights' Sought*, WASH. POST (Aug. 24, 2015), https://www.washingtonpost.com/local/md-politics/police-reform-advocates-call-on-md-lawmakers-to-address-officer-misconduct/2015/08/24/e2775c88-4a67-11e5-846d-02792f854297_story.html [https://perma.cc/ST8R-URXF] (describing the push for reform to the Maryland LEOBR after the Freddie Gray riots).

256 *See* Mark Wilson, *Austin Police Union Ready to Re-Enter Contract Negotiations*, AUSTIN AMERICAN-STATESMAN (last updated Sept. 25, 2018), https://www.statesman.com/NEWS/20180130/Austin-police-union-ready-to-re-enter-contract-negotiations [https://perma.cc/7SXQ-UANH] (describing how activists have demanded changes to the union contract because it does not "provide enough oversight and accountability for officers").

257 *See* Tonya Francisco, *Police Union Contract Talks Continue, as do Calls from [sic] More Civilian Oversight*, WGN9 (last updated May 22, 2018), https://wgntv.com/2018/05/21/police-union-contract-talks-continue-as-do-calls-from-more-civilian-oversight [https://perma.cc/PV28-W7K6] (quoting grassroots organizer who argues that the Chicago contract gives officers more protection than that afforded to civilians and demands changes).

Appendix A: Agencies Studied

City	State
Anchorage	AK
Fairbanks	AK
Juneau	AK
Little Rock	AR
Chandler	AZ
Glendale	AZ
Goodyear	AZ
Lake Havasu City	AZ
Mesa	AZ
Peoria	AZ
Phoenix	AZ
Tempe	AZ
Tucson	AZ
Alameda	CA
Anaheim	CA
Antioch	CA
Arcadia	CA
Azusa	CA
Bakersfield	CA
Baldwin Park	CA
Berkeley	CA
Brea	CA
Brentwood	CA
Buena Park	CA
Burbank	CA
Carlsbad	CA
Cathedral City	CA
Ceres	CA
Chico	CA
Chino	CA
Chula Vista	CA
Citrus Heights	CA
Clovis	CA

City	State
Colton	CA
Concord	CA
Corona	CA
Costa Mesa	CA
Culver City	CA
Cypress	CA
Daly City	CA
Davis	CA
Delano	CA
Downey	CA
El Cajon	CA
El Monte	CA
Elk Grove	CA
Escondido	CA
Fairfield	CA
Folsom	CA
Fontana	CA
Fountain Valley	CA
Fremont	CA
Fresno	CA
Fullerton	CA
Garden Grove	CA
Gardena	CA
Gilroy	CA
Glendale	CA
Glendora	CA
Hanford	CA
Hawthorne	CA
Hayward	CA
Hemet	CA
Huntington Beach	CA
Huntington Park	CA
Indio	CA

City	State
Inglewood	CA
Irvine	CA
La Habra	CA
La Mesa	CA
Lincoln	CA
Livermore	CA
Lodi	CA
Long Beach	CA
Los Angeles	CA
Madera	CA
Manhattan Beach	CA
Manteca	CA
Menlo Park	CA
Merced	CA
Milpitas	CA
Modesto	CA
Monterey Park	CA
Mountain View	CA
Murrieta	CA
Napa	CA
National City	CA
Newport Beach	CA
Novato	CA
Oakland	CA
Oceanside	CA
Ontario	CA
Orange	CA
Oxnard	CA
Palm Springs	CA
Palo Alto	CA
Pasadena	CA
Petaluma	CA
Pittsburg	CA
Placentia	CA
Pleasanton	CA

City	State
Pomona	CA
Redding	CA
Redlands	CA
Redondo Beach	CA
Redwood City	CA
Rialto	CA
Richmond	CA
Riverside	CA
Rocklin	CA
Roseville	CA
Sacramento	CA
Salinas	CA
San Bernardino	CA
San Diego	CA
San Francisco	CA
San José	CA
San Leandro	CA
San Luis Obispo	CA
San Mateo	CA
San Rafael	CA
San Ramon	CA
Santa Ana	CA
Santa Barbara	CA
Santa Clara	CA
Santa Cruz	CA
Santa Maria	CA
Santa Monica	CA
Santa Rosa	CA
Simi Valley	CA
South Gate	CA
South San Francisco	CA
Stockton	CA
Sunnyvale	CA
Torrance	CA
Tracy	CA

City	State
Tulare	CA
Turlock	CA
Tustin	CA
Union City	CA
Upland	CA
Vacaville	CA
Vallejo	CA
Ventura	CA
Visalia	CA
Walnut Creek	CA
Watsonville	CA
West Covina	CA
West Sacramento	CA
Westminster	CA
Whittier	CA
Woodland	CA
Yuba City	CA
Aurora	CO
Boulder	CO
Commerce City	CO
Denver	CO
Fort Collins	CO
Greeley	CO
Pueblo	CO
Thornton	CO
Bridgeport	CT
Bristol	CT
Fairfield	CT
Greenwich	CT
Hartford	CT
Manchester	CT
Meriden	CT
Middletown	CT
Milford	CT
Naugatuck	CT

City	State
New Haven	CT
Norwalk	CT
Norwich	CT
Stamford	CT
Stratford	CT
Torrington	CT
Waterbury	CT
West Hartford	CT
District of Columbia	DC
Dover	DE
Newark	DE
Wilmington	DE
Aventura	FL
Boca Raton	FL
Boynton Beach	FL
Bradenton	FL
Cape Coral	FL
Clearwater	FL
Coconut Creek	FL
Coral Gables	FL
Coral Springs	FL
Davie	FL
Daytona Beach	FL
Delray Beach	FL
Doral	FL
Fort Lauderdale	FL
Fort Myers	FL
Fort Pierce	FL
Gainesville	FL
Greenacres	FL
Hallandale Beach	FL
Hialeah	FL
Hollywood	FL
Jacksonville	FL
Jupiter	FL

City	State
Kissimmee	FL
Lakeland	FL
Largo	FL
Lauderhill	FL
Margate	FL
Melbourne	FL
Miami	FL
Miami Beach	FL
Miami Gardens	FL
Miramar	FL
North Miami	FL
North Miami Beach	FL
Ocala	FL
Ocoee	FL
Orlando	FL
Ormond Beach	FL
Oviedo	FL
Palm Bay	FL
Palm Beach Gardens	FL
Pembroke Pines	FL
Pensacola	FL
Plantation	FL
Port Orange	FL
Port St. Lucie	FL
St. Petersburg	FL
Sarasota	FL
Sunrise	FL
Tampa	FL
Titusville	FL
West Palm Beach	FL
Honolulu	HI
Ames	IA
Ankeny	IA
Bettendorf	IA
Cedar Rapids	IA

City	State
Council Bluffs	IA
Davenport	IA
Des Moines	IA
Dubuque	IA
Iowa City	IA
Sioux City	IA
West Des Moines	IA
Boise	ID
Pocatello	ID
Addison	IL
Algonquin	IL
Arlington Heights	IL
Aurora	IL
Bartlett	IL
Belleville	IL
Berwyn	IL
Bloomington	IL
Bolingbrook	IL
Buffalo Grove	IL
Calumet City	IL
Carol Stream	IL
Carpentersville	IL
Champaign	IL
Chicago	IL
Chicago Heights	IL
Cicero	IL
Crystal Lake	IL
Danville	IL
Decatur	IL
DeKalb	IL
Des Plaines	IL
Downers Grove	IL
Elgin	IL
Elk Grove	IL
Elmhurst	IL

City	State
Evanston	IL
Galesburg	IL
Glendale Heights	IL
Glenview	IL
Gurnee	IL
Hanover Park	IL
Hoffman Estates	IL
Joliet	IL
Lombard	IL
Moline	IL
Mount Prospect	IL
Mundelein	IL
Naperville	IL
Normal	IL
North Chicago	IL
Northbrook	IL
Oak Lawn	IL
Oak Park	IL
Orland Park	IL
Oswego	IL
Palatine	IL
Park Ridge	IL
Pekin	IL
Peoria	IL
Plainfield	IL
Rock Island	IL
Rockford	IL
Romeoville	IL
St. Charles	IL
Schaumburg	IL
Skokie	IL
Springfield	IL
Tinley Park	IL
Urbana	IL
Waukegan	IL

City	State
Wheaton	IL
Wheeling	IL
Woodridge	IL
Carmel	IN
Evansville	IN
Fort Wayne	IN
Gary	IN
Indianapolis	IN
Lafayette	IN
Muncie	IN
South Bend	IN
Terre Haute	IN
Kansas City	KS
Lawrence	KS
Topeka	KS
Wichita	KS
Bowling Green	KY
Covington	KY
Lexington	KY
Louisville	KY
Alexandria	LA
Baton Rouge	LA
Boston	MA
Brockton	MA
Cambridge	MA
Chicopee	MA
Fall River	MA
Fitchburg	MA
Framingham	MA
Haverhill	MA
Lowell	MA
Medford	MA
New Bedford	MA
Newton	MA
Plymouth	MA

City	State
Revere	MA
Somerville	MA
Taunton	MA
Waltham	MA
Watertown	MA
Worcester	MA
Baltimore	MD
Bowie	MD
Frederick	MD
Lewiston	ME
Portland	ME
Ann Arbor	MI
Battle Creek	MI
Bay City	MI
Dearborn	MI
Detroit	MI
East Lansing	MI
Eastpointe	MI
Farmington Hills	MI
Flint	MI
Grand Rapids	MI
Jackson	MI
Kalamazoo	MI
Lansing	MI
Lincoln Park	MI
Livonia	MI
Madison Heights	MI
Midland	MI
Novi	MI
Portage	MI
Roseville	MI
Saginaw	MI
Southfield	MI
Sterling Heights	MI
Taylor	MI

City	State
Troy	MI
Warren	MI
West Bloomfield	MI
Westland	MI
Wyoming	MI
Blaine	MN
Bloomington	MN
Coon Rapids	MN
Duluth	MN
Mankato	MN
Minneapolis	MN
Moorhead	MN
Rochester	MN
St. Cloud	MN
St. Paul	MN
Shakopee	MN
Woodbury	MN
Blue Springs	MO
Columbia	MO
Independence	MO
Kansas City	MO
O'Fallon	MO
St. Charles	MO
St. Joseph	MO
St. Louis	MO
Springfield	MO
University City	MO
Billings	MT
Bozeman	MT
Butte	MT
Great Falls	MT
Helena	MT
Missoula	MT
Bellevue	NE
Grand Island	NE

City	State
Lincoln	NE
Omaha	NE
Concord	NH
Dover	NH
Manchester	NH
Nashua	NH
Rochester	NH
Atlantic City	NJ
Bayonne	NJ
Brick	NJ
Camden	NJ
Clifton	NJ
East Orange	NJ
Edison	NJ
Elizabeth	NJ
Fair Lawn	NJ
Fort Lee	NJ
Garfield	NJ
Hackensack	NJ
Hamilton	NJ
Hoboken	NJ
Jersey City	NJ
Kearny	NJ
Linden	NJ
Long Branch	NJ
New Brunswick	NJ
Passaic	NJ
Paterson	NJ
Perth Amboy	NJ
Plainfield	NJ
Sayreville	NJ
Trenton	NJ
Union City	NJ
Vineland	NJ
West New York	NJ

City	State
Westfield	NJ
Woodbridge	NJ
Albuquerque	NM
Hobbs	NM
Las Cruces	NM
Rio Rancho	NM
Santa Fe	NM
Henderson	NV
Las Vegas	NV
North Las Vegas	NV
Reno	NV
Sparks	NV
Albany	NY
Binghamton	NY
Buffalo	NY
Cheektowaga	NY
Cicero	NY
Freeport	NY
Hempstead	NY
Irondequoit	NY
Ithaca	NY
Jamestown	NY
Long Beach	NY
Mount Vernon	NY
New Rochelle	NY
New York	NY
Niagara Falls	NY
Oyster Bay	NY
Poughkeepsie (City)	NY
Poughkeepsie (Town)	NY
Riverhead	NY
Rochester	NY
Syracuse	NY
Tonawanda	NY
Troy	NY

City	State
Utica	NY
White Plains	NY
Yonkers	NY
Akron	OH
Beavercreek	OH
Boardman	OH
Bowling Green	OH
Brunswick	OH
Canton	OH
Cincinnati	OH
Cleveland	OH
Cleveland Heights	OH
Colerain	OH
Columbus	OH
Cuyahoga Falls	OH
Dayton	OH
Delaware	OH
Dublin	OH
Elyria	OH
Euclid	OH
Fairborn	OH
Fairfield	OH
Findlay	OH
Gahanna	OH
Grove City	OH
Hamilton	OH
Hilliard	OH
Huber Heights	OH
Kent	OH
Kettering	OH
Lakewood	OH
Lancaster	OH
Lima	OH
Mansfield	OH
Marion	OH

City	State
Mason	OH
Massillon	OH
Mentor	OH
Middletown	OH
Newark	OH
North Olmstead	OH
North Ridgeville	OH
North Royalton	OH
Reynoldsburg	OH
Springfield	OH
Stow	OH
Strongsville	OH
Toledo	OH
Upper Arlington	OH
Warren	OH
Westerville	OH
Westlake	OH
Youngstown	OH
Broken Arrow	OK
Edmond	OK
Lawton	OK
Midwest City	OK
Moore	OK
Norman	OK
Oklahoma City	OK
Shawnee	OK
Stillwater	OK
Tulsa	OK
Albany	OR
Beaverton	OR
Bend	OR
Corvallis	OR
Eugene	OR
Grants Pass	OR
Gresham	OR

City	State
Hillsboro	OR
Keizer	OR
Lake Oswego	OR
McMinnville	OR
Medford	OR
Oregon City	OR
Portland	OR
Salem	OR
Springfield	OR
Tigard	OR
Allentown	PA
Bethlehem	PA
Erie	PA
Philadelphia	PA
Pittsburgh	PA
Reading	PA
Scranton	PA
Cranston	RI
East Providence	RI
Newport	RI
Pawtucket	RI
Warwick	RI
Woonsocket	RI
Rapid City	SD
Sioux Falls	SD
Memphis	TN
Nashville	TN
Abilene	TX
Amarillo	TX
Austin	TX
Baytown	TX
Beaumont	TX
Brownsville	TX
Cedar Park	TX
Corpus Christi	TX

City	State
Dallas	TX
Del Rio	TX
Denton	TX
Edinburg	TX
El Paso	TX
Fort Worth	TX
Galveston	TX
Georgetown	TX
Harlingen	TX
Houston	TX
Laredo	TX
Lufkin	TX
McAllen	TX
McKinney	TX
Mesquite	TX
Pharr	TX
Port Arthur	TX
Round Rock	TX
San Angelo	TX
San Antonio	TX
San Marcos	TX
Temple	TX
Waco	TX
Salt Lake City	UT
Burlington	VT
Auburn	WA
Bellevue	WA
Bellingham	WA
Bothell	WA
Bremerton	WA
Des Moines	WA
Everett	WA
Federal Way	WA
Issaquah	WA
Kennewick	WA

City	State
Kent	WA
Lacey	WA
Lake Stevens	WA
Lakewood	WA
Lynwood	WA
Marysville	WA
Puyallup	WA
Redmond	WA
Renton	WA
Richland	WA
Seattle	WA
Spokane	WA
Tacoma	WA
Vancouver	WA
Walla Walla	WA
Wenatchee	WA
Yakima	WA
Appleton	WI
Brookfield	WI
Fond du Lac	WI
Green Bay	WI
Janesville	WI
Kenosha	WI
Madison	WI
Menomonee Falls	WI
Milwaukee	WI
New Berlin	WI
Oshkosh	WI
Wausau	WI
Wauwatosa	WI
West Allis	WI

APPENDIX B: SURVEY INSTRUMENT

SURVEY
Police Opinions of Interrogation Regulations

INSTRUCTIONS: CIRCLE ONE ANSWER FOR EACH PROMPT BELOW

1. Some advocates have proposed giving suspects up to 48 hours of advanced notice before an interrogation. In your opinion, would this limit the ability of interrogators to uncover the truth or otherwise burden an investigation?

    A. Frequently burden investigation
    B. Occasionally burden investigation
    C. Rarely burden investigation
    D. Never burden investigation

2. Some advocates have proposed giving suspects access to incriminating evidence in the possession of investigators before an interrogation. In your opinion, would this limit the ability of interrogators to uncover the truth or otherwise burden an investigation?

    A. Frequently burden investigation
    B. Occasionally burden investigation
    C. Rarely burden investigation
    D. Never burden investigation

3. Do you believe any of the regulations proposed above would be useful in reducing the likelihood of false confessions?

    A. Yes, these reforms would reduce the number of false confessions
    B. No, these reforms would not reduce the number of false confessions

Optional Feedback: In the space provided below, please explain why you believe these proposed regulations would or would not limit the ability of interrogators to uncover the truth or otherwise burden an investigation:

_____

_____

Appendix C: Letter to Survey Participants

[[Address Field]]

Dear «First_Name_»«Last_Name_»,

My name is Stephen Rushin, and I am a professor at Loyola University Chicago School of Law. I am writing you to invite you to participate in a short research survey about various proposed legal limitations on police interrogations of criminal suspects.

You were randomly selected as a possible participant because you are part of a law enforcement agency in the United States.

To share your views on this important issue as part of a random sample, please fill out the attached survey and send it back to me at your earliest convenience (envelope and postage is enclosed). Your responses are anonymous.

The survey will take about **1-3 minutes** to complete. I believe it is critically important for legislators to understand law enforcement perspectives before considering new legal regulations. I greatly appreciate your feedback.

Sincerely,

Stephen Rushin
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srushin1@luc.edu
Tel: 312.915.7691