BRET D. ASBURY[*]

Anti-Snitching Norms and Community Loyalty

ABSTRACT

   In recent years, a troubling trend has emerged within a number of
poor, black communities. Termed "Stop Snitching," it has manifested
itself in the form of community members' refusing to cooperate with
police investigations of community crimes. The result of this
widespread refusal to cooperate has been a reduced number of crimes
solved within these communities; without cooperating witnesses, it
has proven exceedingly difficult for police to make criminal cases.

   Reactions to Stop Snitching have taken two predominant forms,
both of which are mistaken. The first, most often attributed to law
enforcement officers, is contempt. To officers and the like-minded,
community members who do not assist in criminal investigations are
violating the ethical obligation all citizens have to aid in the arrest and
prosecution of criminal actors. The second reaction to Stop
Snitching, most often coming from citizens largely isolated from
poor, black communities, is confusion. Assuming the police to be
allies of the citizenry, such individuals wonder why anyone would
even entertain the notion of refusing to help the police solve
community crimes.

   This Article suggests a different understanding of Stop Snitching,
arguing that poor, black community members' refusal to cooperate
with police investigations should be viewed as neither ethically
condemnable nor inexplicable, but rather as a natural extension of the
innate human aspiration to be loyal. It does so by situating Stop
Snitching within the existing literature on loyalty and asserting that
the refusal to cooperate with police represents a privileging of
community loyalty over loyalty to the state. Throughout the various
strata of contemporary society, such privileging of the familiar over
the remote is common, and Stop Snitching is neither puzzling nor
reprehensible when viewed as a manifestation of this manner of
prioritization.

   Once Stop Snitching is understood as a reflection of the weak
loyalty bonds that exist between police officers and the poor, black
communities they serve, it becomes clear that it can be curtailed and
ultimately   eliminated   only   through   police   efforts   aimed   at

strengthening these bonds. This Article closes with a discussion of the steps police should take in order to succeed in this regard.

INTRODUCTION

Two things we must never do: never lie, never tattle.[1]

–General Douglas MacArthur

Upon leaving his home on February 4, 2006, Israel "Izzy" Ramirez, a cheerful, twenty-nine-year-old father of three, could not have known that he would never return.[2] A bodyguard by trade, Izzy set out that day to work for rapper Trevor Smith, better known by his stage name, Busta Rhymes.[3] Smith was to star in a music video being filmed that night and, having been robbed in the past, tasked Izzy with guarding his jewelry.[4]

The video shoot took place at the Kiss the Cactus soundstage in the Greenpoint section of Brooklyn, New York.[5] As many as five hundred people arrived at Kiss the Cactus that night, including a number of popular musicians.[6] Though details are hazy, at some point it fell to Izzy to assist with expelling a rival rapper and his entourage from the premises. As the dispute spilled into the Brooklyn streets, an unidentified party shot Izzy in the chest.[7] He would never see his family again.

Police arriving on the scene received little witness cooperation. Though an estimated crowd of seventy-five witnessed the shooting, none would finger Izzy's killer.[8] Police believed that Smith was standing next to Izzy when he was shot and were confident that Smith could identify the shooter.[9] And yet he too refused to cooperate.[10]

---

[1] DOUGLAS MACARTHUR, REMINISCENCES: GENERAL OF THE ARMY 15 (1964).

[2] Ian Frazier, *The Rap: Keeping Hip-Hop Safe from Crime*, NEW YORKER, Dec. 8, 2008, at 72, 78.

[3] Andrew Jacobs, *Commissioner Chides Rapper for Silence in Guard's Killing*, N.Y. TIMES, Feb. 16, 2006, http://www.nytimes.com/2006/02/16/nyregion/16rap.html.

[4] Frazier, *supra* note 2; Lisa Muñoz & Alison Gendar, *Rhymes Has a Reason*, N.Y. DAILY NEWS, Feb. 7, 2006, http://www.nydailynews.com/archives/news/2006/02/07 /2006-02-07_rhymes_has_a_reason_.html.

[5] Kati Cornell Smith et al., *A Rhymes or Reason: Probers Eye Fifty Pals in Video Shoot*, N.Y. POST, Feb. 7, 2006, at 6.

[6] Jacobs, *supra* note 3. Celebrities in attendance included rappers 50 Cent and Missy Elliott, as well as singer Mary J. Blige. *Id.*

[7] Frazier, *supra* note 2, at 78.

[8] *Id.*; Smith et al., *supra* note 5, at 6.

[9] Muñoz & Gendar, *supra* note 4.

By August, police had conducted nearly one hundred interviews in an effort to solve Izzy's murder; none led to a suspect.[11]

The unresolved murder of Izzy Ramirez illustrates a practice that has, in recent years, become increasingly common in a number of urban communities: the blanket refusal to cooperate with police. Though criminal organizations have long nurtured an ethos condemning cooperation with law enforcement, the arrival of this norm among ordinary, noncriminal citizens—such as the dozens who witnessed Ramirez's murder—is a recent trend. Nonetheless, since its emergence in popular culture in 2004, the so-called Stop Snitching phenomenon has quickly spread from coast to coast and shows few signs of abating.

Public reactions to Stop Snitching have generally fallen into two categories: contempt and confusion. For some, particularly those in law enforcement, Stop Snitching raises significant ethical issues arising out of the belief that cooperating with police is part and parcel of one's civic duty.[12] The logic goes something like this: because most of us accept the general proposition that crime is bad, it is the duty of every citizen to assist law enforcement in catching and punishing criminals.[13] Deciding whether to cooperate with law enforcement thus enters into the realm of individual ethics: To cooperate with the police is good (or right) and to refuse to cooperate with the police is bad (or wrong). Once this simple dichotomy is established, the refusal to cooperate serves as a basis for ethical condemnation.[14] Regarding Smith's refusal to reveal Izzy's killer, for

---

[10] Jacobs, *supra* note 3.

[11] Emily Vasquez, *Rapper Silent About Aide's Death*, N.Y. TIMES, Aug. 22, 2006, http://www.nytimes.com/2006/08/22/nyregion/22busta.html. Ramirez's murder remains unsolved. *Id.*

[12] *See* ETHAN BROWN, SNITCH: INFORMANTS, COOPERATORS AND THE CORRUPTION OF JUSTICE 10 (2007) ("Law enforcement, unsurprisingly, became increasingly concerned about the prevalence of the 'Stop Snitchin'' phenomenon, which they viewed as a middle finger to cops or, worse, witness intimidation in a T-shirt."). Brown's reference is to the infamous "Stop Snitchin'" T-shirts that became a concomitant expressive vehicle for those ascribing to anti-cooperation norms as the phenomenon first began to arise. *See infra* note 28 and accompanying text (discussing Stop Snitching T-shirts).

[13] NYPD Commissioner Raymond Kelly noted that, because Smith is among the class of wealthy artists, his duty to assist with the NYPD's investigation is particularly pronounced: "[T]hese hip-hop artists are making a lot of money. You'd like to think that there's some sort of civil responsibility that goes along with that. But apparently there isn't." Andrew Jacobs, *When Rappers Keep Their Mouths Shut Tight*, N.Y. TIMES, Feb. 19, 2006, http://www.nytimes.com/2006/02/19/nyregion/19busta.html.

[14] Press accounts relating to Stop Snitching have condemned it, and those who refuse to cooperate with the authorities, in no uncertain terms. *See, e.g.*, Leonard Pitts, Jr., *Seeing*

example, one exasperated NYPD detective declared, "If Busta saw who killed his bodyguard, he should come forward, because it's right . . . . There's a principle involved here. Busta should come forward because it's right."[15] Echoing this sentiment, NYPD Commissioner Raymond Kelly added in connection with the murder, "No one has come forward, no one has volunteered to be questioned in the matter . . . . I find it quite frankly, quite disturbing."[16]

To those not involved in law enforcement, on the other hand, Stop Snitching has proven more puzzling than ethically troublesome. As Alexandra Natapoff—whose research in recent years has focused on various aspects of snitching[17]—has observed, "Mainstream media and its consumers . . . often have difficulty understanding urban perceptions of 'stop snitching,' finding inexplicable the idea that law-abiding people might resist cooperating with the police."[18] In the minds of such individuals, refusing to help the police solve crimes simply defies logic; absent an imminent or likely threat,[19] they

---

Weakness and Cowardice in Miami Park, HOUS. CHRON., Feb. 9, 2009, http://www .chron.com/CDA/archives/archive.mpl?id=2009_4699067 (describing "the so-called stop snitching culture" as being "as weak and cowardly as it gets"); Editorial, *Protecting Witnesses*, BALT. SUN, Mar. 29, 2009, http://articles.baltimoresun.com/2009-03-29/news /0903270125_1_witness-intimidation-victims-and-witnesses-securing-justice (declaring that "the 'stop snitching' culture [is a] serious threat to securing justice for crime victims across the country"); Jessica Van Sack, *No-Snitchin' Creed Stymies Cops' Probe*, BOS. HERALD, Jan. 19, 2009, at 17 (blaming the "reviled stop-snitching culture" for inhibiting an investigation). The Reverend Al Sharpton has weighed in as well, launching a national "anti-stop-snitching" campaign, and declaring to those who refuse to cooperate: "'You are traitors to our race and denigrating our community.'" Pitts, *supra*.

15 Frazier, *supra* note 2, at 78.

16 Jacobs, *supra* note 3.

17 *See, e.g.*, Alexandra Natapoff, *Beyond Unreliable: How Snitches Contribute to Wrongful Convictions*, 37 GOLDEN GATE U. L. REV. 107 (2006); Alexandra Natapoff, *Deregulating Guilt: The Information Culture of the Criminal System*, 30 CARDOZO L. REV. 965 (2008); Alexandra Natapoff, *Snitching: The Institutional and Communal Consequences*, 73 U. CIN. L. REV. 645 (2004).

18 ALEXANDRA NATAPOFF, SNITCHING: CRIMINAL INFORMANTS AND THE EROSION OF AMERICAN JUSTICE 132–33 (2009); *see also* Tony Norman, Editorial, *"Code of Street" Needs Big Morality Boost*, PITTSBURGH POST-GAZETTE, May 4, 2007, http://www.post -gazette.com/pg/07124/783280-153.stm (wondering why "any rational person would refuse to help authorities locate" some criminals).

19 Though safety is certainly a concern for many, assessing what motivates those who refuse to cooperate cannot end there. As one Department of Justice report notes, "Examples of mass intimidation given by police and prosecutors . . . suggest that fear is only one factor contributing to the reluctance of witnesses to step forward; strong community ties and a deep-seated distrust of law enforcement may also be strong deterrents to cooperation." KERRY MURPHY HEALEY, NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, VICTIM AND WITNESS INTIMIDATION: NEW DEVELOPMENTS AND

wonder, why would any law-abiding citizen ever *not* desire to help the police remove a criminal from the streets?

In answering this question, this Article seeks to recontextualize Stop Snitching by showing that the refusal to cooperate with law enforcement officers by members of certain communities should be understood as neither inexplicable nor evidence of an ethical shortcoming, as it is most often perceived, but rather as a natural extension of the innate human desire to be loyal. Loyalty has historically been among the most cherished of attributes, and the violation of loyalty—betrayal—has consistently been condemned across cultures. In modern society, individuals have numerous loyalties—to people, groups, and principles, and when they can exist harmoniously, having numerous loyalties poses no significant hurdle. One can be loyal to one's fellow union members during the day, for example, and loyal to one's family at night and on weekends. But when loyalties conflict, one must privilege one in reaching a resolution—loyalty to one necessarily requires disloyalty to the other.

Regardless of a witness's motivation, cooperating with the police can be read as an act of loyalty to the state, for it is an affirmative step taken in furtherance of the state's objective of bringing criminals to justice. Refusing to cooperate, on the other hand, can be read as an act of disloyalty, as an illustration of the fact that the state is not the locus of the witness's sole or primary loyalty. A witness who refuses to cooperate with the police privileges a separate loyalty over loyalty to the state,[20] and this Article argues that, in the poor, black communities in which it is most prominent, Stop Snitching can be read as a privileging of community loyalty.[21] There is a fundamental disconnect between these communities and the police, and Stop Snitching represents the culmination of the historical uneasiness that has existed between them, an uneasiness that persists today and plays

---

EMERGING RESPONSES 2 (1995), *available at* http://www.ncjrs.gov /pdffiles/witintim.pdf. Given the existence of confidential tip lines and means of conveying information other than face-to-face interaction with a uniformed officer, fear for one's safety cannot fully account for why so many ordinary (noncriminal) citizens refuse to assist with police investigations.

[20] For example, a father who has witnessed his daughter stealing an expensive necklace from a department store would in most cases be unlikely to cooperate with police investigating the crime or assist in her prosecution. His loyalty to his daughter would, thus, be given primacy over his loyalty to the state.

[21] This is not to say, of course, that members of these communities are disloyal to the state, but merely that their act of disloyalty—refusing to cooperate with police—can be read as privileging their community loyalty over their state loyalty. In this regard, refusing to cooperate with the police is akin to the example in note 20.

a pivotal role in deterring witnesses from helping the police solve crimes. Analyzing Stop Snitching against the backdrop of the literature on loyalty offers an alternative account of what motivates many of those who refuse to cooperate with the police and suggests steps police can take in order to more effectively encourage witness cooperation.[22]

This Article proceeds in four Parts. Part I discusses the origins of Stop Snitching, tracing its roots to a homemade DVD that was produced in Baltimore in 2004. It then examines recent scholarship on snitching, noting that much of it relates to real-life prisoner's dilemmas, that is, scenarios in which an individual in state custody must decide whether or not to defect in order to receive a reduced criminal punishment. Though this literature is not unrelated to Stop Snitching, there is a meaningful distinction between the motivations of a potential cooperating witness who is currently in police custody and those of one who is not. It is this latter group's motivations with which this Article is primarily concerned. Part II examines literature on loyalty arising out of a number of fields in order to illustrate the diverse array of relationships that can be cast in terms of loyalty. A consistent theme of this Part is the manner in which one's loyalty to one person or group of people (for example, one's peers) can be tested only when it is in tension with another of one's loyalties (for example, one's principles), and the studies cited show that individuals tend to privilege loyalty to individuals with whom, or groups with which, they interact regularly over loyalty to more remote individuals or principles.

Part III assesses Stop Snitching through the loyalty lens. It argues that, upon witnessing a crime within one's community, one frequently faces a conflict of loyalties: to one's community and its members, on the one hand, and to the state, on the other. This clash of loyalties is hardest to resolve when one is from a socially and economically

---

[22] To be sure, there are numerous reasons that could explain one's refusal to cooperate with police other than an ethical void or a sense of loyalty, fear for one's safety being chief among them. One oft-cited example of the type of witness intimidation that takes place in some communities is the case of Angela Dawson, a Baltimore resident who decided to report drug activity in her neighborhood. *See, e.g.*, *A Tragic Symbol; '00 to '09*, BALT. SUN, Dec. 27, 2009, at A13. In retaliation, a local man poured gasoline on her home in the middle of the night and lit it on fire. *Id.* Dawson, her husband, and five children perished in the blaze. *Id.* Though tragedies such as Dawson's have rendered fear of retaliation an underlying cause of the refusal to cooperate in some communities, fear of retaliation cannot alone account for the pervasiveness of the depth and breadth of Stop Snitching. *See* HEALEY, *supra* note 19, at 2 (noting "that fear is only one factor contributing to the reluctance of witnesses to step forward").

isolated community that has an uneasy relationship with the police (the agents of the state seeking cooperation), such as the communities in which Stop Snitching is most prominent. Although solutions to this conflict vary based on individual and communal circumstances, the primary objective of Part III is to show that deciding not to cooperate can be a reasonable choice representing the privileging of one loyalty over another, the result of a calculus not unlike those described in Part II. Borrowing from the literature on community policing, Part IV suggests strategies police might employ to foster an increased sense of loyalty to the state among residents of poor, black communities—thereby increasing the rate of witness cooperation— and makes the case that such a measure could quickly succeed if implemented with Stop Snitching in mind.

I

WHEN WITNESSES REFUSE TO COOPERATE

This Part first examines the origins of Stop Snitching. Though it initially arose out of the timeless tradition of criminals' refusing to implicate other criminals, Stop Snitching has evolved in such a way that now noncriminals in many communities are unwilling to cooperate with police investigations, even in the aid of solving violent crimes. This Part next describes existing literature on snitching in order to show that much of it is concerned primarily with in-custody or criminal witnesses rather than ordinary citizens who have witnessed crimes. Using this literature as a point of departure, this Part then hones in on the specific type of refusal to cooperate with law enforcement that is the concern of this Article, namely that of "civilians" who have no immediately discernable reason to withhold helpful investigative information.

A. Stop Snitching's Humble Baltimore Origins

The ascent of Stop Snitching can be traced to a single low-budget DVD produced by Rodney Bethea, a Baltimore barber and entrepreneur, in 2004. The DVD—titled *Stop Fucking Snitching, Vol. 1*—stars Rodney Thomas, who, in a turn worthy of Virgil, leads his audience on a whirlwind tour through some of Charm City's meanest streets. Thomas introduces the audience to a series of Baltimore's "gun-toting, marijuana-smoking denizens who angrily lament the prevalence of informants and cooperators in their communities and

threaten the 'rats,' 'bitches,' and 'snitches' with violent retribution."[23] Though general antipathy toward informants is the primary theme of *Stop Snitching*, Thomas also names specific cooperators over the course of the DVD's 108 minutes.[24]

Notwithstanding its provocative content, *Stop Snitching* likely would not have had any impact beyond a few neighborhoods in Baltimore but for the fact that NBA superstar Carmelo Anthony, who grew up in Baltimore, makes a brief appearance in the film.[25] The combination of Anthony's celebrity and the film's subversive message turned *Stop Snitching* into a sensation.[26] The national media quickly picked up the story,[27] and *Stop Snitching* achieved a level of infamy neither Bethea nor Thomas could have predicted.

Concurrent with the DVD's growing national profile, Stop Snitching T-shirts began to appear in stores and on the streets, first in Baltimore, then in cities throughout the country. The shirts, most often featuring a stop sign and containing the words "Stop Snitching," became a brief fashion craze,[28] further popularizing the anti-cooperation message of Bethea's film. The perceived message of the DVD and T-shirts was that all forms of cooperation with the police, including that of witnesses to crimes and even family members of victims, should cease.[29] As Richard Delgado has noted, abiding by this perceived message "is rapidly becoming a social norm," as it relates to crimes both minor (such as drug possession) and major (such as homicide).[30] This fledgling social norm has had a meaningful effect, as Delgado has observed: "In some neighborhoods,

---

[23] BROWN, *supra* note 12, at 170. As one might expect, Thomas's tone is coarse and confrontational throughout *Stop Snitching*. In one oft-quoted scene he notes, "'To all you rats and snitches lucky enough to cop one of these DVDs, I hope you catch AIDS in your mouth and your lips are the first thing to die.'" *Id.* at 170–71; *see also* Jeremy Kahn, *The Story of a Snitch*, ATLANTIC MONTHLY, Apr. 2007, at 80, 86 (quoting the same sentence).

[24] BROWN, *supra* note 12, at 171.

[25] Kahn, *supra* note 23, at 86. Anthony appears in only six of *Stop Snitching*'s 108 minutes. *Id.*; *see also* PAUL BUTLER, LET'S GET FREE: A HIP-HOP THEORY OF JUSTICE 87 (2009) (noting that the "DVD's main claim to fame was a cameo by the superstar basketball player Carmelo Anthony, who grew up in Baltimore").

[26] Kahn, *supra* note 23, at 86.

[27] NATAPOFF, *supra* note 18, at 122.

[28] BROWN, *supra* note 12, at 172–73; *see also* BUTLER, *supra* note 25, at 87 (describing Stop Snitching–related T-shirts as "the height of fashion for African American teenagers in Baltimore" "[f]or a few months in 2005").

[29] Richard Delgado, *Law Enforcement in Subordinated Communities: Innovation and Response*, 106 MICH. L. REV. 1193, 1205 (2008) (book review).

[30] *Id.*

because of the unwillingness of witnesses to come forward, the [homicide] 'clearance rate' is much lower [than the sixty percent national average]."[31]

For his part, Bethea, *Stop Snitching*'s producer, claims that these consequences are the result of an unfortunate misreading of his documentary. "'When we refer to snitches,'" Bethea has said, "'we are referring to a person engaging and profiting from illegal activities. And when they get arrested, to save themselves, they tell on everyone else they know. No one likes that.'"[32] He continued, "'That is considered a snitch. The old lady that lives on the block that call the police because guys are selling drugs in front of her house, she's not a snitch, because she is what would be considered a civilian.'"[33] To Bethea, *Stop Snitching* stands merely as a reminder of the importance of adherence to *omertà*, the underground code of silence that forbids individuals who are involved in illegal activities from providing incriminating information about one another.[34] In his mind, the lack of civilian cooperation and concomitant soaring rates of unsolved crimes that have arisen out of *Stop Snitching* are the result of a tragic misunderstanding.

Nonetheless, it is the broader message—do not cooperate with the police, period—that took hold. And though members of affected communities and law enforcement took note of the diminishing frequency of witness cooperation right away, Stop Snitching did not enter into the broader public's consciousness until 2007.[35] In April of that year, CBS's *60 Minutes* aired a story titled "Stop Snitchin'."

---

[31] *Id.*

[32] Julie Bykowicz, *Producer Says Education, Not Intimidation, Is Sequel's Focus; 'Snitching 2' Out Soon*, BALT. SUN, Dec. 20, 2007, http://articles.baltimoresun.com/2007 -12-20/news/0712200168_1_snitching-2-bethea-stop-snitching; *see also* Kahn, *supra* note 23, at 88 (noting that "snitch" has a particular meaning in the DVD: "They are referring to people that are engaged in illegal activities, making a profit from it, and then when it comes time for the curtains to close—you do the crime, you do the time—now no one wants to go to jail." (quoting Bethea)).

[33] Kahn, *supra* note 23, at 88; *see also* Bykowicz, *supra* note 32 ("Bethea said those labels don't apply to 'the little old lady on the block' who calls the police about a drug deal. 'She is not considered a snitch,' he said. 'She is a civilian doing what she is supposed to do.'").

[34] *See* BUTLER, *supra* note 25, at 90 (defining *omertà*); *see also* Jacob Honigman, *Can't Stop Snitchin': Criminalizing Threats Made in "Stop Snitching" Media Under the True Threats Exception to the First Amendment*, 32 COLUM. J.L. & ARTS 207, 218 n.72 (2009) (same).

[35] *See* NATAPOFF, *supra* note 18, at 123 (noting that "'stop snitching' hit prime time when CNN anchor Anderson Cooper hosted a series of shows on the phenomenon").

Reported by CNN's Anderson Cooper, the story observed that an anti-snitching ethos had taken hold in inner-city neighborhoods throughout the country and noted that hip-hop artists played a meaningful role in the proliferation of the Stop Snitching message.[36] To illustrate this point, the story featured an interview with Cameron Giles, a successful rapper known to his fans as Cam'ron. Having earlier referenced the fact that Giles had been shot but refused to name the shooter, Cooper tested the limits of Giles' commitment to refusing to talk to police as follows:

> COOPER: Is there any situation where you think it's OK to talk to the police?
>
> GILES: Yeah, definitely. Say, "Hello. How you feel? Everything all right?" Period.
>
> COOPER: That's it?
>
> GILES: There's nothing really to talk about with the police. I mean, for what?
>
> COOPER: If there's a serial killer living next door to you, though, and you know that person is, you know, killing people, would you be a snitch if you called police and told them?
>
> GILES: If I knew the serial killer was living next door to me?
>
> COOPER: Yeah.
>
> GILES: No, I wouldn't—I wouldn't call and tell anybody on them, but I'd probably move. But I'm not going to call and be like, you know, "The serial killer's in 4E."[37]

Though Cooper's hypothetical is preposterous—and though Giles issued a public apology in the wake of his comments[38]—the *60 Minutes* segment's message to America was clear: Giles is not alone. There is a movement afoot within our urban centers pursuant to which

---

36 *60 Minutes: Stop Snitchin'* (CBS television broadcast Apr. 22, 2007), *available at* http://www.cbsnews.com/stories/2007/04/19/60minutes/main2704565.shtml. Cooper opened his story with the following paragraph:

> In most communities, a person who sees a murder and helps the police put the killer behind bars is called a witness. But in many inner-city neighborhoods in this country, that person is called a snitch. "Stop snitchin'" is a catchy, hip-hop slogan that embodies and encourages this attitude. You can find it on everything from rap music videos to clothing . . . . [F]ueled by hip-hop music, promoted by major corporations, what was once a backroom code of silence among criminals is now being marketed like never before.

37 *Id.*

38 BROWN, *supra* note 12, at 9.

ordinary citizens, as a rule, will not cooperate with law enforcement, and crimes are going unsolved as a result.[39] A scourge that had been festering largely unnoticed within a handful of urban hot spots was now national news, and the ensuing outrage was as uniform as it was swift.[40]

Albeit perhaps unintended, the drastic expansion of anti-snitching norms within civilian populations is the legacy of *Stop Snitching*, and this expansion represents a meaningful departure from prior anti-snitching norms, which tended to impose codes of silence primarily upon criminal actors, particularly those in police custody. The following section explores this distinction and highlights why Stop Snitching represents a substantive departure from traditional forms of noncooperation, even as each at bottom relates back to the innate human desire to be loyal.

B. *Traditional Forms of Anti-Snitching Norms*

The tradition among criminals pursuant to which they do not give up their confederates when questioned by the police is both long-standing and well-known. Though compliance with this tradition is seldom difficult during the ordinary course of events, to the extent that a defendant facing serious criminal charges has firsthand knowledge about the criminal activities of others, he faces something of a conundrum. Possessing such knowledge places this defendant in a position superior to that which he might otherwise occupy because it presents him with options.[41] On the one hand, he may refuse to cooperate and either take his case to trial or take advantage of the customary sentencing discount made available to those who plead

---

[39] Cooper explains to his audience that

Stop snitchin' once meant "Don't tell on others if you're caught committing a crime." But it's come to mean something much more dangerous. "Don't cooperate with the police, no matter who you are." As a result, police say, witnesses are not coming forward; murders are going unsolved. Reluctance to talk to police has always been a problem in poor, predominantly African-American communities, but cops and criminologists belive, something has changed in recent years.

60 Minutes, *supra* note 36.

[40] *See, e.g.*, Norman, *supra* note 18 (deriding Giles based on his *60 Minutes* comments and noting the "pathology and contradictions of the 'stop snitchin'' campaign"); Earl Ofari Hutchinson, Editorial, *Rapper Cam'ron Wouldn't Have Snitched on Cho*, CHI. DEFENDER, Apr. 25, 2007, at 8 ("The anti-snitch message Cam'ron pumps puts [witnesses] squarely in harm's way.").

[41] Daniel C. Richman, *Cooperating Clients*, 56 OHIO ST. L.J. 69, 77 (1995).

guilty. On the other hand, he may cooperate with the authorities by informing on his confederates in the hopes of taking advantage of the "special leniency" the government has long afforded cooperators.[42] In a vacuum (absent fear of retaliation), the choice is an easy one; as a rational actor, he should cooperate in whatever way he can in order to obtain the shortest possible sentence (or no sentence at all). But the reality is far more complicated.

It is most often the case—though it is by no means always so—that a defendant with personal knowledge of another's criminal activity has obtained it via a relationship of trust with that person.[43] Cooperating with the authorities can in such instances be viewed as a violation of that trust, as a form of disloyalty. There is thus a pronounced evolution that takes place when a defendant commits to cooperating; whereas before he was just a criminal, now he is both a criminal and a snitch. And it is based upon assuming the latter appellation rather than the former that the defendant subjects himself to being "generally regarded with aversion and nauseous disdain."[44]

This aversion and disdain arise in large part out of the fact that it is assumed that a snitch is cooperating primarily for selfish reasons. As James Q. Wilson has noted, "[a] major motive—most investigators believe *the* major motive—of an informant is to obtain leniency on a criminal charge in exchange for information about accomplices involved in that charge or persons involved in other criminal offenses."[45] In other words, the act of disloyalty proves the snitch to be a selfish actor who, having committed a crime, seeks to avoid his just deserts. This perception alone can explain the public's disdain for snitches, and it also helps to explain why choosing to become a snitch may subject a defendant to physical retaliation, loss of employment, or other forms of marketplace retaliation.[46]

But there are psychic costs as well. A would-be snitch must accept that, upon turning on his confederates, he has violated the

---

[42] *Id.* at 77–78.

[43] *Id.* at 78.

[44] Richard C. Donnelly, *Judicial Control of Informants, Spies, Stool Pigeons, and Agent Provocateurs*, 60 YALE L.J. 1091, 1093 (1951); *see also* GEORGE P. FLETCHER, LOYALTY: AN ESSAY ON THE MORALITY OF RELATIONSHIPS 8 (1993) ("Some of the strongest moral epithets in the English language are reserved for the weak who cannot meet the threshold of loyalty: They commit adultery, betrayal, treason.").

[45] JAMES Q. WILSON, THE INVESTIGATORS: MANAGING F.B.I. AND NARCOTICS AGENTS 65 (1978); *see also* Richman, *supra* note 41, at 82.

[46] Richman, *supra* note 41, at 79, 82.

fundamental human value of loyalty. He has become the tattletale he once mocked as a child; has turned his back on individuals who have in many cases been his mentors, peers, and friends; has chosen to escape or diminish his liability in exchange for creating liability for another. And he must live with each of these realities for the rest of his life.

Nonetheless, the case for snitching can be compelling. Notwithstanding the consequences, both external and internal, a snitch may reap a hefty reward "in the form of a far lighter sentence than he otherwise would have received."[47] Even in the abstract, the value of freedom cannot be overstated.

Let us return to our hypothetical defendant from above. His decision whether or not to cooperate will be informed by a host of factors and will ultimately (assuming little or no fear of retaliation) turn on the extent to which he values his freedom vis-à-vis his desire to remain loyal to his confederates. As family, friends, and future life prospects play a significant role in this determination, so does the strength of his bond with his confederates—the depth of his loyalty to them. Though the ultimate decision will vary based on individual circumstances, the tension between freedom and loyalty forms the backdrop of any defendant's decision-making process.

Such is not the case with respect to civilians who refuse to cooperate. Though it could be argued that civilians subject themselves to the further degradation of their community by not helping law enforcement catch criminals,[48] thereby curtailing their freedom on some level, they will not be deprived of their freedom in the literal sense upon refusing to cooperate. They are also not being asked to inform on their co-conspirators because, by definition, these civilians are not involved in criminal activity. In other words, there is a meaningful distinction between a civilian's decision-making process regarding whether or not to snitch and a criminal defendant's. But as argued in the following two Parts, loyalty plays as critical a role in assessing Stop Snitching as it does in assessing a criminal defendant's choice whether or not to cooperate.

---

[47] *Id.* at 85.

[48] *But see infra* Part II.A.2.a (discussing how mass incarceration within certain communities has rendered sending additional community members to prison or jail at times harmful to the community as a whole).

II

THE PERSISTENT DESIRE TO BE LOYAL

Though earlier portions of this Article have addressed loyalty in its most basic form, this Part, drawing on sources from across disciplines, discusses some of the specific ways in which loyalty has been conceptualized and understood in recent years. It shows that, because a given individual has numerous loyalties of varying strengths, the depth of his or her loyalty to any one person, group, or principle is often unclear, even to the individual. But when loyalties conflict, the result is greater clarity; in resolving such a conflict, an individual must determine which of his or her loyalties is stronger. This Part then discusses real-life scenarios in which conflicts of loyalties have arisen and how individuals have most commonly resolved them. Most often the challenge is reconciling loyalty to one's group with loyalty to more remote principles or institutions by deciding whether to report instances of peer misconduct. Lastly, this Part examines police officer "blue codes" in order to illustrate anti-snitching norms in a specific context, one that, ironically, closely resembles Stop Snitching.

A. *Defining Loyalty*

"Loyalty" can be defined in many ways. In the broadest sense, it describes the desire one has to be faithful to another, for whatever reason. Inherent in any conception of loyalty is an assessment of right and wrong; we feel the pull to be loyal because we feel it is the right thing to do. As one commentator has observed, "[t]he ideal of loyalty is at the heart of common-sense morality."[49] He continues,

> That morality highlights our special obligations to ourselves and one another and duties of personal loyalty to other people bulk large amongst these; they are the duties that we owe to other people in virtue of more or less intimate bonds, whether bonds of family, friendship, comradeship, collaboration, or whatever.[50]

Loyalty can take many forms, the simplest of which is the loyalty an individual has toward another. Though these loyalties might sometimes be initiated by an oath or pledge, the strongest person-to-person loyalties come from within and are internalized in such a way that a deviation therefrom strikes the disloyal individual as a moral

---

[49] Philip Pettit, *The Paradox of Loyalty*, 25 AM. PHIL. Q. 163, 163 (1988).

[50] *Id.*

transgression. So it is, for example, that a husband feels morally compelled to be loyal to his wife in a manner that need not refer back to his public certification to do so. And so it is that a psychotherapist recognizes that she should not disclose her patients' innermost thoughts without reference to her oath to maintain confidentiality.[51]

Person-to-person loyalty can itself take many forms—be it loyalty to a friend, colleague, sibling, parent, child, or anyone else—and can vary depending on the circumstances. One commentator has described this variance as follows: "[I]nside the family I might find my interests conflicting with my son's, but, outside the family, loyalty is likely to make me see his interests as ours or even mine."[52] This perception of a unity of interests is characteristic of the strongest form of person-to-person loyalty.

The second form of loyalty is loyalty to principles. This form of loyalty is distinct from loyalty to individuals or loyalty to groups (discussed below). "[O]ne is loyal to . . . principles if one sticks to them even when it is difficult to do so."[53] Principles to which one might be loyal include religious tenets, a prescribed code, or a general sense of right and wrong. Loyalty to principles is not exclusive of other loyalties. It follows that loyalty to principles and loyalty to individuals or groups can come into conflict. What am I to do, for example, when my son, to whom I am loyal, violates an essential tenet of our faith, or when he commits a crime I deem reprehensible without justification? Though this Article explores how such conflicts of loyalty are to be resolved in Part II.B., Part II.C., and Part III, for now it is sufficient to note that every individual is loyal to a

---

[51] Interestingly, as George Fletcher has noted, evidentiary rules seem to incorporate strong sympathies for the principle that the law should not interfere with significant relationships of loyalty. The professional loyalties of attorneys to their clients and physicians and psychotherapists to their patients are secured in the sense that the clients and patients can prevent disclosure in a legal dispute of material transmitted to the professional in confidence. . . .

    . . . .

    . . . The husband need not betray his wife on the stand. He can stand loyal, guarding the confidences of their intimate relationship.

FLETCHER, *supra* note 44, at 79–80.

[52] R.E. Ewin, *Loyalty: The Police*, CRIM. JUST. ETHICS, Summer/Fall 1990, at 3, 3; *see also* Robert A. Larmer, *Whistleblowing and Employee Loyalty*, 11 J. BUS. ETHICS 125, 126 (1992) (referencing parent-child as a particularly strong form of loyalty).

[53] Ewin, *supra* note 52, at 8.

certain number of principles and that this loyalty can at times come into conflict with his or her other loyalties.[54]

Most important for recontextualizing Stop Snitching is the third form of loyalty: loyalty to a group. Examples of group loyalty include loyalty to one's coworkers, teammates, fellow residents, congregation, or community. Groups can be defined in many ways, and the loyalty members feel to a given group can vary considerably. As a result, recognizing manifestations of group loyalty is often more difficult than recognizing person-to-person loyalty or loyalty to principles.

Mark Van Vugt and Claire Hart have described loyalty as a "complex, multifaceted construct, consisting of emotive, cognitive, as well as behavioral elements."[55] They continue,

> [group] loyalty may be manifested through the experience of strong, positive emotions (happiness, joy, empathy) associated with group membership. Cognitively, loyalty may be manifested via depersonalized trust in other members, and optimism about the group's future. And, behaviorally, loyalty may be evidenced in the sacrifices that people make to help their group . . . .[56]

Due to the many possible manifestations of group loyalty, assessing the extent to which loyalty to the group is felt by each member can be challenging: "groups may be cohesive in different ways and, within the same group, members may contribute to the cohesion of the group in different ways."[57]

This is not to say, however, that there is not a correlation between certain shared experiences or characteristics and the formation of group loyalty. As Van Vugt and Hart have noted, "a key determinant of someone's group loyalty is the strength and nature of their identification with the group . . . . When people identify highly with

---

[54] *See id.* at 4 (underscoring the likelihood of conflicts between loyalty to principles and other loyalties by noting that "each of us is a member of many different groups for many different purposes").

[55] Mark Van Vugt & Claire M. Hart, *Social Identity as Social Glue: The Origins of Group Loyalty*, 86 J. PERSONALITY & SOC. PSYCHOL. 585, 586 (2004).

[56] *Id.* at 586–87.

[57] Noah H. Friedkin, *Social Cohesion*, 30 ANN. REV. SOC. 409, 411 (2004); *see also id.* at 417 ("A large, complexly differentiated group, with members connected directly or indirectly (through intermediaries) by paths of positive (weak or strong) interpersonal ties, may be cohesive if the group's social network has particular structural characteristics."); Patricia A. Adler & Peter Adler, *Intense Loyalty in Organizations: A Case Study of College Athletics*, 33 ADMIN. SCI. Q. 401, 405 (1988) ("Loyalty can thus vary from person to person and group to group . . . .").

their group, they see themselves primarily as group members."[58]
Spending a significant amount of time around and sharing
experiences with a more or less static set of people fosters group
identity and, in turn, group loyalty.[59]

Oppositional forces can also help to create and strengthen group
loyalty. For example, a shared history of exclusion or oppression can
enhance loyalty: "that a group of people is excluded (whether or not
they are properly excluded) can make them feel a common cause in
response to what they see as oppression and can result in the growth
of loyalty amongst them."[60] Such loyalty, "provoked by a dislike or
perhaps distrust of the other group, is likely to be marked by behavior
that ignores legitimate interests and concerns of the other group."[61]
This loyalty can be further strengthened in situations where there is a
perceived inequality of resources[62] or where group members
"perceive a threat to the status of [their] group."[63]

Taken together, these criteria suggest that the poor, black
communities in which Stop Snitching is most prominent are fertile
grounds for the formation of strong bonds of group loyalty.[64] The

---

[58] Van Vugt & Hart, *supra* note 55, at 587.

[59] Friedkin, *supra* note 57, at 417 (noting that "investigators have emphasized the extent
of positive interpersonal ties among persons as a basis of social cohesion" and adding that
others have "argued that social cohesion is indicated by the number of mutual dyadic ties
within the group"); *see also id.* at 419 ("A high density of positive interpersonal
attachments indicates that people are involved, on average, in rewarding relationships with
a large fraction of group members.").

[60] Ewin, *supra* note 52, at 13; *see also id.* at 8 (noting that one can be loyal to "groups
with whom one has been through danger").

[61] *Id.* at 13. In a similar vein, but at a more basic level, individuals' identification as
members of one group, and not as members of other groups, can also help to create and
strengthen group loyalty. "An [exclusive] in-group identification triggers a de-
individuated state in which group members reference their attitudes and behaviors to the
prototypical norms that are most characteristic of the in-group and uncharacteristic of the
out-groups." Friedkin, *supra* note 57, at 420. Once established, these in-group norms
become self-enhancing, and as the distinction between in-group and out-group behavior
grows, it reinforces negative stereotypes about the members of other groups, thereby
increasing in-group loyalty. *Id.*

[62] Friedkin, *supra* note 57, at 421.

[63] Van Vugt & Hart, *supra* note 55, at 587.

[64] Though group loyalty is something of an amorphous concept, one's neighborhood or
community can be a group toward which one experiences a bond of loyalty. Ewin, *supra*
note 52, at 4 ("Again, in different circumstances, the loyalties expressed might not be to
family, but to neighborhood, and, in such cases, my neighbor and his children would be
part of my group."); *cf. id.* at 8 ("One can be loyal to people, as one might be loyal to a
friend with whom one had been through a lot or who had been a great help when one had
had troubles. One can similarly be loyal to groups of people with whom one has grown up

social and economic isolation that these groups experience[65] fosters a greater sense of group identity than would otherwise be the case,[66] and the exclusion many members of these communities have felt and continue to experience helps to foster a strong sense of group loyalty.[67]   Elaborating on this point, George Fletcher explains that one's loyalties arise in large part from one's "historical self," meaning that one's place of birth, circumstances of growing up, and childhood experiences play the most significant role in shaping our primary loyalties—to families, groups, or nations.[68] Where one has been born into a community in which opportunities and exposure to outside groups are limited, one's historical self tends to be more strongly linked to one's community.

Fletcher further explains that, because of the strong connection between one's loyalties and one's notion of self, individuals frequently adhere to the stronger of their loyalties, even when, from an external perspective, it might be wrong to do so: "Loyalties generally lead people to suspend judgment about right and wrong . . . . In loyalty, as in love, there is not even an illusion of scientific neutrality and intellectual impartiality."[69]   Thus, in attempting to resolve a conflict of loyalties, individual judgments about what is "right" or "wrong" are secondary to determining to which of two conflicting interests one is more loyal.

Loyalty should therefore be viewed as neither good nor bad in and of itself,[70] but as simply an aspirational value fundamental to human

---

or groups one has deliberately joined or groups with whom one has been through danger or hard times, and so on." (footnote omitted)). Part III assesses Stop Snitching through the lens of loyalty by using one's neighborhood or community as the relevant group.

[65] *See, e.g.*, WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY (1987) (noting the political, social, and economic isolation of members of the most impoverished inner-city neighborhoods); WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR (1996) (same).

[66] *See supra* notes 58–60 and accompanying text.

[67] *See supra* notes 60–61 and accompanying text.

[68] FLETCHER, *supra* note 44, at 16–18.

[69] *Id.* at 36, 61; *see also* Ewin, *supra* note 52, at 5 ("Loyalty is an *emotional* tie that can lead people to be unreasonable and to overlook and override proper claims on them.").

[70] *See* Bryan Byers & William G. Powers, *Criminal Justice and Ethical Ideology: An Exploration of a Loyalty-Truthfulness Dilemma*, 25 J. CRIM. JUST. 527, 529 (1997) ("The term *loyalty* often conjures up images of righteousness and correctness, while disloyalty may be seen as negative or deleterious." But in reality, it "seems to be relative, and any value-laden meaning that may be attached to loyalty and disloyalty will fluctuate with the circumstances to which the concept is being applied.").

behavior.   Whether remaining loyal to a particular interest is ultimately good or bad, right or wrong, thus depends on the circumstances; loyalty is not always good or right, and disloyalty is not always bad or wrong. And because one frequently encounters scenarios in which two or more loyalties conflict with one another,[71] it is impossible for one to remain loyal at all times.

Regardless of the underlying crime, at its most basic level, the decision to snitch carries with it an implicit privileging of one loyalty over another; one who snitches is being loyal to the state and disloyal to the assailant (who will face punishment as a result) and, in many instances, to one's community at large.[72] In contemporary society, where "objects of our loyalty are families, tribes, or communities that at best overlap haphazardly with organized political authority,"[73] deciding whether to be loyal to the state or to another constituency (be it the assailant or the community at large) can be particularly challenging.   As Fletcher notes, "we no longer can fuse the communities that compel our loyalty with the authorities that collect our taxes, exact military service from us, and organize the economies that sustain our material existence."[74] In an ideal world, loyalty to the state and loyalty to one's community and its members would never conflict. But the reality is that the two are frequently at odds, and "the state's demand for exclusive loyalty is rapidly losing its grip."[75] This is particularly the case within the poor, black communities in which Stop Snitching is most prominent, the members of which, as noted above,[76] have reason to exhibit stronger community loyalty than members of groups that are less isolated and marginalized. The relationship between the strength of these bonds and the perpetuation of Stop Snitching will be discussed in detail in Part III.

One final point about group loyalty before moving forward. Irrespective of the extent to which each of the aforementioned factors can and do create or enhance group loyalty, in-group "loyalty can . . .

---

[71] *See infra* Part II.B (discussing the inevitability of conflicts of loyalties given the fact that every individual has numerous loyalties).

[72] *See infra* Part III.A.2.a (discussing some of the ways that assisting police in imprisoning fellow community members by serving as a witness can negatively affect communities that have experienced mass incarceration).

[73] FLETCHER, *supra* note 44, at 58.

[74] *Id.*

[75] *Id.*

[76] *See supra* notes 60–67 and accompanying text.

vary from person to person and from group to group."[77]   This point reminds us that no group can attain the same loyalty from all of its members and that regardless of the applicability of the factors described above, no group by its characteristics alone can create absolute loyalty—the decision to be loyal varies based on factual circumstances and from person to person.   With respect to Stop Snitching, this means that even the most loyal member of a tightly bound community will, under some circumstances, cooperate with the police and that others feeling few, if any, community connections might at times refuse to do so.   In this way we are reminded that the decision whether or not to cooperate with the police remains highly individualized, community characteristics notwithstanding.

This section has set forth the basic characteristics of the three types of loyalty—person-to-person loyalty, loyalty to principles, and group loyalty—and noted both the inherently fluid, circumstance-specific nature of group loyalty and the reasons why one would expect there to be a particularly strong sense of group loyalty within poor, black communities.   The following sections show some of the ways that individuals address situations in which their loyalties conflict, setting the stage for the application of the group-loyalty framework to Stop Snitching, which will take place in Part III.

B. Loyalties in Conflict

Given that any individual has numerous loyalties—to individuals, principles, and groups—it is inevitable that these loyalties at times come into conflict.   When facing a conflict of loyalties, one must decide to which other person, principle, or group one is more loyal. Though there exists a significant body of literature on the resolution of conflicts of loyalties, the scholarship that is most relevant relates to conflicts between loyalty to a group or its members and loyalty to principles or institutions.   This section offers examples of instances in which such conflicts arise in order to illustrate the numerous factors at play in deciding to whom or to what one is more loyal, a decision which, in turn, determines what action to take.   It employs examples from the military and other organizational settings to show that group loyalty most often trumps loyalty to principles or larger institutions.

---

[77] *See* Adler & Adler, *supra* note 57, at 405.

1. The Military

The United States Naval Academy's mission is to train future Naval and Marine Corps officers. In addition to attending classes and participating in drills, formations, and athletics, midshipmen (students at the Naval Academy) are "required to monitor both their own behavior and the behavior of their peers through a system of self-regulation called the Honor Concept."[78] The Honor Concept includes a provision stating, "midshipmen will not lie, cheat, or steal, nor will they mislead or deceive anyone as to known facts."[79] In order to ensure that the Honor Concept's system of self-regulation is enforced, "midshipmen are officially required to 'take action' or respond if they know that an individual has lied, cheated, or stolen."[80] Because the Naval Academy mandates enforcement of the Honor Concept and midshipmen are officially reprimanded for failure to monitor one another's behavior, there is a strong "incentive for midshipmen to snitch on peers."[81]

Though "[l]oyalty to peers is usually compatible with loyalty to the [Naval] Academy . . . violations of the Honor Concept present occasions when these loyalties conflict."[82] Take, for example, a midshipman who notices a group of peers cheating on a problem set. That midshipman's obligation under the Honor Concept is clear: he must take action. But his closeness to his cheating peers will likely give him pause before doing so, as he faces a conflict of loyalties: to his peers, who will face the possibility of expulsion if reported,[83] on the one hand, and to the principles of the Honor Concept (and by extension the Naval Academy), on the other.

In studying snitching at the Naval Academy, Jana Pershing found that, more often than not, peer-group loyalty trumped loyalty to the principles of the Honor Concept.[84] Based on her assessment of Naval Academy statistics, a United States General Accounting Office survey of midshipmen, and interviews she conducted with Naval Academy

---

[78] Jana L. Pershing, *To Snitch or Not to Snitch? Applying the Concept of Neutralization Techniques to the Enforcement of Occupational Misconduct*, 46 SOC. PERSP. 149, 150 (2003).

[79] *Id.* at 156.

[80] *Id.*

[81] *Id.* at 150–51.

[82] *Id.* at 157.

[83] *Id.* at 156, 169.

[84] *Id.* at 171.

graduates, Pershing found that honor violations were widely underreported and that graduates who snitched on their peers faced ostracization.[85] The most consistent and recurrent pattern among graduates who did not report their fellow midshipmen "was the appeal to a higher loyalty, that is, peer loyalty."[86] In other words, where loyalty to one's peers came into conflict with loyalty to the requirements of the Honor Concept (which here acts as a manifestation of loyalty to principles of the Naval Academy), the former trumped the latter.[87]

Though the Naval Academy is, as Pershing notes, a "total institution"—meaning that the "midshipmen are relatively isolated from the civilian community for four years"[88]—similar conflicts of loyalty arise within other subgroups of the armed forces. In an article titled *Loyalty is the Highest Honor*, for example, Marine Corps Captain Gerald Ormerod explains the particular set of conflicts of loyalty that Marines face: "Every individual must balance the competing demands of various kinds of loyalty—to self, to family/friends, to one's unit, to the Corps, to country, to God—and each of us will determine our priorities differently, based on our unique moral code."[89]

As always, there is the potential for these loyalties to conflict, and the conflict Ormerod highlights is between loyalty to one's unit and loyalty to the principle of abiding by high ethical standards. He writes, "[h]igh ethical standards are not necessarily a requirement of loyalty and trust. . . . Marines and leaders of Marines need to have a mutual feeling of commitment to be successful as a fighting force."[90] "High ethical standards, although desired and sought, are not a requirement for this bond," for they "do not directly affect the combat effectiveness of a unit as long as there is mutual loyalty and trust between the leaders and the troops."[91] In short, Ormerod concludes, "[t]he loyalty of a Marine is the highest honor that can be bestowed on a leader. It is not something that should be taken for granted, abused, or betrayed. In my view, it is more important than high

---

[85] *Id.* at 170.

[86] *Id.* at 171.

[87] *Id.* at 170.

[88] *Id.* at 151.

[89] Gerald J. Ormerod, *Loyalty Is the Highest Honor*, PROC. U.S. NAVAL INST., June 1997, at 55, 55.

[90] *Id.* at 56.

[91] *Id.*

ethical behavior in forming a tight, cohesive unit."[92] To Ormerod, though loyalty to ethical principles is "desired and sought," it is far less important to the functioning of a Marine Corps unit than loyalty to the unit and its commanders. Thus, when the two loyalties conflict, it is the duty of a Marine to cast aside his principles and to remain loyal to the unit.

Ormerod's understanding of the hierarchy of loyalties in the military context is far from unique. As Donna Winslow has noted with respect to the Canadian military, "[l]oyalty is encouraged at all levels as military values and structures grant primacy to collective goals . . . . Individuals exhibit strong allegiance to their group and the group exerts social control over the individual member. In the military, group allegiance is seen as essential to combat effectiveness."[93]

Commonplace as it may be, the primacy of group loyalty in the military context does not come without costs. For, as Winslow shows, excessive "loyalty to the primary group can lead members to work at counter purposes to the overall goals of a mission or even of the Army and the Canadian Forces."[94] She concludes, based on her examination of the breakdown of discipline in two Canadian peace operations in Somalia and the former Yugoslavia, that "[s]trong affective ties, which are encouraged by combat norms, create highly cohesive units that can actually impede the good functioning of the overall organization."[95]

Whether strong bonds of group loyalty are truly necessary precursors to effective military operations and whether they are ultimately a positive or negative feature of the military is beyond the scope of this Article. What is important to note is that, in the military context, where loyalty to one's group is given particular primacy, deciding whether to be loyal to one's group or principles can often prove vexing. As these examples show, loyalty to peers frequently trumps loyalty to principles in the military setting, and this privileging is often not just tolerated but celebrated.

---

[92] *Id.*

[93] Donna Winslow, *Misplaced Loyalties: The Role of Military Culture in the Breakdown of Discipline in Peace Operations*, 35 CANADIAN REV. SOC. & ANTHRO. 345, 345–46 (1998); *see also* Ormerod, *supra* note 89, at 56 ("For a unit to function effectively, all members must be loyal to one another and to their leadership.").

[94] Winslow, *supra* note 92, at 346.

[95] *Id.* at 364.

To be sure, it is in a sense unsurprising that the military places particular importance on fostering group loyalty at the expense of loyalty to principles, given its primary objective of preparing its members for life-and-death situations in which group members must know that they can trust and rely upon one another without qualification. What may be less intuitive is that individuals in settings that are not in any way potentially dangerous face and resolve conflicts of loyalty in a similar way. The following subsection provides one such example.

2. *Whistleblowing in Nonmilitary Organizational Settings*

Whistleblowing can be broadly defined as "the disclosure by organizational members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action."[96] Whistleblowing is widely regarded as a valuable tool for reigning in organizational misconduct. In this regard it has been described as "prosocial" in that it is a form of behavior that is "intended to help others."[97] At the peer-to-peer level, whistleblowing is considered to be of particular importance with respect to the interests of the organization as a whole: "Co-workers who are willing to monitor their peers' behavior and report violations to management represent a potentially important supplemental control resource for organizations."[98]

Notwithstanding its clear value, whistleblowing in the organizational context is most often discretionary, in contrast, for example, to the mandatory "take action" provision of the Naval Academy's Honor Concept.[99] Thus, as one study found, "observers do not act when they do not view the form of wrongdoing in question as requiring action on moral grounds, nor do they act when they believe that their job does not require reporting the specific activity."[100] The same study found that, "even when it might appear

---

[96] Janet P. Near & Marcia P. Miceli, *Organizational Dissidence: The Case of Whistle-Blowing*, 4 J. BUS. ETHICS 1 (1985).

[97] Marcia P. Miceli et al., *Who Blows the Whistle and Why?*, 45 INDUS. & LAB. REL. REV. 113, 115 (1991).

[98] Linda Klebe Trevino & Bart Victor, *Peer Reporting of Unethical Behavior: A Social Context Perspective*, 35 ACAD. MGMT. J. 38, 38 (1992).

[99] *See supra* notes 79–80 and accompanying text.

[100] Miceli et al., *supra* note 97, at 126.

that one's job requires the reporting of wrongdoing," employees consider whistleblowing to be discretionary.[101]

That whistleblowing is (rightly or wrongly) perceived as discretionary renders it reflective of the conflicts of loyalty described above. An employee witnessing wrongdoing is frequently torn between doing the right thing for his or her organization—or, depending on the circumstances, for broader society—and remaining loyal to his or her colleagues by keeping their misconduct a secret. As one study notes, "[t]he social context within which peer reporting may occur can be represented as a conflict between opposing forces that pressure people to think and behave in different ways. For example, powerful group norms against tattling pressure group members not to report other group members . . . ."[102] In addition to these norms, the reporting of misconduct is at times explicitly discouraged, particularly with respect to reporting it to an external organization.[103]

The pressures that potential whistleblowers face not to report misconduct, both implicit and explicit (frequently in the form of intimidation[104]), make it such that the decision to blow the whistle can have significant costs. As a general matter, a whistleblower "who reports a peer's misconduct to authorities outside the group can expect to encounter negative reactions," such as no longer being trusted and no longer being considered part of the group.[105] Specifically, due to a tacit understanding "that employees will be loyal to their employer and respect the sensitivities and reputations of their colleagues," whistleblowers "can expect to incur the wrath of both [their] co-workers and the organisation for which they work,"[106] for often the act of blowing the whistle is "regarded as [an act of]

---

[101] *Id.*

[102] Trevino & Victor, *supra* note 98, at 39; *see also* Elizabeth Wolfe Morrison & Frances J. Milliken, *Organizational Silence: A Barrier to Change and Development in a Pluralistic World*, 25 ACAD. MGMT. REV. 706, 706, 708 (2000) (referencing "empirical data indicating that employees often feel compelled to remain silent in the face of concerns or problems" and describing "'a climate of silence': widely shared perceptions among employees that speaking up about problems or issues is futile and/or dangerous").

[103] *See* Miceli et al., *supra* note 97, at 114.

[104] Michael J. Gundlach et al., *The Decision to Blow the Whistle: A Social Information Processing Framework*, 28 ACAD. MGMT. REV. 107, 109 (2003).

[105] Trevino & Victor, *supra* note 98, at 40.

[106] James Gobert & Maurice Punch, *Whistleblowers, the Public Interest, and the Public Interest Disclosure Act of 1998*, 63 MOD. L. REV. 25, 27 (2000).

betrayal, a decision to bring the organisation into disrepute."[107] As a result, "the substance—and truth or falsity—of the whistleblower's disclosures may wind up taking a back seat to the fact of disclosure."[108] Circumstances aside, nobody likes a snitch.

It is against this backdrop that an observer of misconduct within an organization must decide whether or not to blow the whistle. The reflections of three theorists are helpful in understanding the potential conflicts of loyalty with which such observers must contend. Sissela Bok has argued, with respect to this dilemma as it relates to the disclosure of a matter of public interest, that a potential whistleblower

> hopes to stop the game; but since he is neither referee or coach, and since he blows the whistle on his own team, his act is seen as a violation of loyalty. In holding his position, he has assumed certain obligations to his colleagues and clients . . . . *Loyalty to colleagues and clients comes to be pitted against loyalty to the public interest*, to those who may be injured unless the revelation is made.[109]

Under Bok's view, an employee deciding whether to blow the whistle "must choose between two acts of betrayal, either her employer or the public interest, each in itself reprehensible."[110] In this way, a potential whistleblower can be described as facing a conflict between group loyalty and loyalty to principles.

On the other extreme from Bok is Ronald Duska, who believes that, because the concept of loyalty inherently requires some form of mutuality, and organizations are not capable of forming a bond of loyalty with employees (due to their primary objective of maximizing profits), "there can be no issue of whistleblowing and employee loyalty, since the employee has no duty to be loyal to his employer."[111]

Robert Larmer finds fault with both Bok's and Duska's assessments of the loyalty implications of whistleblowing. He believes that Bok overlooks the possibility that in some instances "blowing the whistle may demonstrate greater loyalty than not

---

[107] *Id.*

[108] *Id.*

[109] Sissela Bok, *Whistleblowing and Professional Responsibility*, *in* ETHICAL THEORY AND BUSINESS 261, 263 (Tom L. Beauchamp & Norman E. Bowie eds., 2d ed. 1983) (emphasis added).

[110] Larmer, *supra* note 52, at 126.

[111] *Id.* at 125 (describing the position proffered by Ronald Duska, *Whistleblowing and Employee Loyalty*, *in* CONTEMPORARY ISSUES IN BUSINESS ETHICS 295 (Joseph R. Des Jardins & John J. McCall eds., 1985)).

blowing the whistle," such as where the misconduct revealed might ultimately benefit the organization, even as the organization would not on its own be inclined to disclose it.[112] Larmer also disagrees with Duska, primarily because, notwithstanding organizations' primary motives (most often profits), considerations of loyalty are not automatically irrelevant: "[T]he fact that an employer's primary motive is economic does not imply that it is not qualified by considerations of the employee's welfare."[113] In light of this qualification, Larmer argues, "it is fallacious to argue that employee loyalty is never appropriate," as Duska does.[114]

In place of Bok's and Duska's arguments, Larmer puts forth a theory of his own. Because he believes that an immoral action is never in an employer's best interest, Larmer asserts that, where the underlying misconduct is immoral, whistleblowing should be viewed as an act of loyalty.[115] Thus, he concludes, "to whistleblow for reasons of morality is to act in one's employer's best interest and involves, therefore, no disloyalty."[116]

Combining the approaches of these three theorists, one is left with no sense of clarity. Though Duska's approach counsels toward whistleblowing in every case because there should be no loyalty to an organization, the act of blowing the whistle brings with it considerable negative esteem that must be considered by any employee who is aware of internal misconduct. Bok complicates the potential whistleblower's decision-making process by making it clear that the decision either to blow or not to blow the whistle carries with it an act of betrayal that cannot be avoided. Though Larmer seeks to find a middle ground by asserting that whistleblowing for reasons of morality is not disloyal, he does not offer guidance regarding how to determine when an act of misconduct crosses the threshold such that it is morally repugnant enough to merit being reported.

---

[112] Larmer, *supra* note 52, at 127. In making this point, Larmer notes that "employers very rarely approve of whistleblowing and generally feel that it is not in their best interests." *Id.* at 126–27. Larmer's disagreement with Bok hinges on the fact that employers may sometimes be incorrect and that whistleblowing can sometimes be in an employer's best interest. The act of whistleblowing therefore need not be perceived as an act of disloyalty to an employer. *Id.* at 127.

[113] *Id.* at 126.

[114] *Id.*

[115] *Id.* at 127–28.

[116] *Id.* at 128.

At bottom, a potential whistleblower must rely upon his or her conscience in determining whether to disclose misconduct within his or her organization. Notwithstanding the consequences, Bok, Duska, and Larmer all seem to agree that certain acts should be reported regardless of the loyalty an employee feels to his or her organization. But ultimately, each employee must make this decision based on the loyalty he or she feels to his or her colleagues vis-à-vis the extent to which he or she endeavors to remain loyal to his or her principles or the organization as a whole. Reconciling these loyalties is never easy and necessarily varies from person to person.

This subsection has illustrated some of the ways that conflicts of loyalty can arise in nonmilitary organizational contexts, domains in which the preservation of one's life cannot be said to underlie the strength of the loyalty bonds group members feel. In conjunction with the previous subsection, it has shown some of the ways that loyalty to one's group can come into conflict with loyalty to one's principles or a larger organization and offered some insights as to how such conflicts are and should be resolved. Both of these subsections have suggested that deciding whether to tell on a peer is both inherently ethically challenging and most often resolved in favor of privileging relationships with group members by not reporting peer misconduct. The following section examines a specific professional realm in which conflicts of loyalty arise with particular frequency and are most obviously relatable to Stop Snitching—that of police officers.

C. *The Pervasiveness of Anti-Snitching Norms Among Police Officers*

Much has been written about police department "blue codes," a term describing the code of silence that is a meaningful component of police culture in departments throughout the world. "Generally," one commentator has observed, "the code of silence refers to the refusal of a police officer to 'rat' on fellow officers, even if the officer has knowledge of wrongdoing or misconduct."[117] Dating back in one form or another in the United States to at least the 1840s, the code of silence has traditionally protected officers involved in ordinary

---

[117] Myriam E. Gilles, *Breaking the Code of Silence: Rediscovering "Custom" in Section 1983 Municipal Liability*, 80 B.U. L. REV. 17, 64 (2000). As William J. Giannetti Jr. has noted, "[t]his tradition calls for loyalty to an errant officer, recognition of the possibility of redemption, and concern about the humiliating shame should an officer's mistakes be paraded before the world." William J. Giannetti, Jr., *Commentary: Handling Dirty Laundry*, CRIM. JUST. ETHICS, Summer/Fall 2003, at 43, 43.

corruption from being reported by their peers. In its modern form, however, the code has been extended to such an extent that officers now feel obligated to cover up for their fellow officers who violate civil rights via other forms of misconduct, violent or otherwise,[118] as well as for "brutal acts, petty thefts, extortionate behavior, abuses of power, and other illegalities."[119]

In order to create solidarity with his or her fellow officers, "[e]very officer tacitly agrees to uphold" the code of silence.[120] As a result, given the nature of police work—which requires among other things that officers make "numerous illegal and semi-legal decisions . . . from time to time"[121]—a good deal of "bad lying"—for example, lying on a report, lying to internal affairs, or lying on the witness stand—takes place in the ordinary course of police work.[122] No officer who has bought into this system (which is to say, nearly every officer) wants his or her instances of "bad lying" to be discovered because they could lead to discipline regardless of their import. Officers in turn cover for others in part out of the expectation that others will cover for them. Because it accordingly arises primarily out of a sense of self-preservation, the code of silence is said to be the strongest code adhered to within police departments, and it is "stronger than similar tacit norms in the highly regarded professions of medicine and law."[123]

---

[118] Gilles, *supra* note 117, at 64–65.

[119] Stan K. Shernock, *The Effects of Patrol Officers' Defensiveness Toward the Outside World on Their Ethical Orientations*, CRIM. JUST. ETHICS, Summer/Fall 1990, at 24, 25; *see also id.* (noting without qualification that "it is an unwritten law in police departments that police officers must never testify against their brother officers").

[120] *Id.* Shernock also references a study in which, when asked to name the most desirable characteristic of a rookie, forty-seven percent of officers said "'he should keep his mouth shut'" and thirteen percent said "'he shouldn't be a stool pigeon.'" *Id.*

[121] *Id.*

[122] NORM STAMPER, BREAKING RANK: A TOP COP'S EXPOSÉ OF THE DARK SIDE OF AMERICAN POLICING 129 (2005).

[123] Shernock, *supra* note 119, at 25 (internal citation omitted). In addition to the police, doctors, and lawyers, another example of a profession having a widespread code of silence regarding member misconduct is the priesthood, though the recent sex scandal involving priests has led to a significant evolution in this norm. *See* Jean-Pierre Benoît & Juan Dubra, *Why Do Good Cops Defend Bad Cops?*, 3 INT'L ECON. REV. 787, 789, 802–03 (2004). Paul Butler has described the widely accepted anti-snitching norm that is prevalent among journalists. BUTLER, *supra* note 25, at 90 ("Journalists are ethically bound not to reveal their sources, even when the source is tied to criminal conduct. This duty not to snitch is actually protected by the law of most states."). Butler notes that, when *New York Times* reporter Judith Miller refused to testify regarding information she had obtained about possible crimes committed by officials in the George W. Bush

Several commentators have likened the police code of silence to the Mafia code of *omertà*.[124] But there is an important distinction between these two otherwise similar codes: "Whereas the Mafia code of conduct involves lawbreakers protecting each other, the police code involves some honest policemen protecting criminal policemen, as well as competent policemen protecting incompetent ones."[125] Thus, police officers face a more meaningful, even ironic, conflict of loyalty when assessing peer misconduct or criminality than do Mafia members doing the same, for the officers have sworn to be loyal to and uphold principles of law, order, and the promotion of the public good. Nonetheless, as suggested above, more often than not police officers choose to be loyal to their group at the expense of loyalty to the state and their sworn principles,[126] and this privileging of the immediate over the more remote mirrors the manner of resolving conflicts of loyalty discussed above in Part II.B.

Before exploring the origins of why it is that law-abiding, competent police officers consistently go to such great lengths to protect crooked and incompetent ones—in other words, why it is that police officer in-group loyalty is so particularly strong—it is worth

---

administration and was subsequently held in contempt of court under federal law, she was painted as a hero and visited in jail by "numerous luminaries . . . including United States senators, other high government officials, and famous journalists such as Tom Brokaw." *Id.* at 90–91; *cf.* Benoît & Dubra, *supra* note 122, at 789 (noting that "there is no comparable wall of silence among professors" and that, should a professor "choose to side with a student against another professor in a grading dispute, he or she would not face the opprobrium of uninvolved faculty members").

[124] *See, e.g.*, Benoît & Dubra, *supra* note 123, at 787; Gobert & Punch, *supra* note 106, at 27; Giannetti, *supra* note 117, at 48 n.2; *see also supra* note 34 and accompanying text (defining *omertà*).

[125] Benoît & Dubra, *supra* note 123, at 787. As noted below, see *infra* note 179 and accompanying text, this manner of "honest policemen protecting criminal policeman" mirrors the manner in which "civilian" witnesses at times protect criminals by not reporting their crimes to the police.

[126] Though, as noted above, *see supra* note 120, loyalty to the police force is inculcated from the time officers are rookies, and it grows stronger over time. As Ewin has noted with respect to a typical senior member of a police force,

> loyalty to the Police Force and the people in it will have come to outweigh what was only ever a vague and abstract loyalty to the community. In important respects, he will have rejected the values of the outside community, and be prepared to go to extraordinary and sometimes illegal lengths to protect what he believes to be the interests of the Police Force and of his police brothers. Loyalty to the Force has become the purpose, rather than the means, of fulfilling his duty.

Ewin, *supra* note 52, at 8 (quoting COMM'N OF INQUIRY INTO POSSIBLE ILLEGAL ACTIVITIES & ASSOCIATED POLICE MISCONDUCT, REPORT OF A COMMISSION OF INQUIRY PURSUANT TO ORDERS IN COUNCIL 210 (1989)).

noting some of the costs associated with rigid adherence to the police code of silence. First, there is the cost to officers who deviate from the norm. Because the code of silence has been so successfully normalized, officers who deviate from it by reporting their fellow officers' misconduct face severe consequences, including social snubbing, malicious mischief, or sabotage.[127]

The example of Paula White-Ruiz, a New York City police officer whose story is borrowed from an article by Myriam Gilles,[128] illustrates the manner in which defiance of the police code of silence often plays out. After a search in which a large sum of money went missing, White-Ruiz reported to her supervisors her suspicion that her partner, John Ward, had stolen it. Though Ward was eventually fired because White-Ruiz's suspicion was correct, White-Ruiz suffered consequences of her own. Immediately shunned at work the day after reporting her partner, she found her tires slashed that evening.[129] Within a week, her captain recommended that she be transferred, and, upon arrival at her new precinct, White-Ruiz found the words "Black Bitch" written on her locker.[130] She was regularly called a "rat" and a "cheese-eater." Her locker was further tampered with, and her car, next to which she once found a dead rat, was again vandalized. In one particularly troubling incident, her fellow officers refused to provide backup in a dangerous situation.[131] Such harassment has the effect of signaling to others that the code of silence is not to be broken, and concerns about self-preservation therefore act as a means of insuring compliance with loyalty to fellow officers, notwithstanding an individual officer's ethical preference for reporting misconduct. In this way—due to rigid, often harsh enforcement—the police code of silence perpetuates itself.[132]

That the code of silence is self-perpetuating brings us to the second, and more significant, cost of police officers' rigid adherence to it: the cost to broader society. Because it is taken for granted that

---

[127] STAMPER, *supra* note 122, at 135.

[128] *See* Gilles, *supra* note 117, at 70–71; *see also* White-Ruiz v. City of New York, 983 F. Supp. 365 (S.D.N.Y. 1997).

[129] *White-Ruiz*, 983 F. Supp. at 368.

[130] *Id.*

[131] *Id.* at 369–71.

[132] As Ewin observes regarding the willingness of police to cover up for each other, "[a]s such procedures become institutionalized, only those police officers willing to go along with them will remain in the force, and, as public perception of these activities in the police force becomes common, only those who seek such activities will join the force . . . ." Ewin, *supra* note 52, at 6.

police officers will be loyal to other officers by not reporting their misconduct, police over time have become increasingly brazen with respect to the criminal acts they are willing to commit.

> General acceptance amongst police officers that they can act with impunity . . . makes possible forays into organized crime that, otherwise, would have been stamped out as soon as they appeared. *The loyalty that makes police officers willing to cover up for each other is what makes possible this criminality and the consequent undermining of the police force.*[133]

In other words, the confidence police officers have in not being caught—which arises out of the code of silence—permits them to cloak themselves in an aegis of rectitude: "The police code effectively requires that it be assumed that whatsoever is done by a police officer legitimately occurs in the course of his duty."[134] Thus cloaked, police may act with greater and greater impunity over time, all the while confident that, to the extent the only witnesses to their misconduct are other officers, they will never have to face formal consequences.

Recognizing the deeply problematic nature of this state of affairs, one might wonder how the police code of silence has grown into its present form. The most persuasive explanation is that at the heart of the construct of the code of silence is a sense of family. "Within the familial dynamic, loyalty is of crucial importance—loyalty to other members of it and thus to the code."[135] In many departments, police socialize almost exclusively with one another.[136] And in cities in which police have a rocky relationship with the general public, they "come to depend on their fellows for physical security, friendship, sympathy, emotional support and a feeling of self-worth."[137] Under these circumstances, a police force can be viewed as something of a total institution, akin to the example of the U.S. Naval Academy referenced above.[138] It therefore follows that the pull of loyalty within many police departments would be particularly strong.

---

[133] *Id.* (emphasis added); *see also* Gilles, *supra* note 117, at 67 (citing the code of silence as the primary reason for the persistence of police abuse, including perjury, cover-ups, and the destruction of evidence, and the retaliation exacted on officers who report misconduct).

[134] Ewin, *supra* note 52, at 10 (quoting COMM'N OF INQUIRY INTO POSSIBLE ILLEGAL ACTIVITIES & ASSOCIATED POLICE MISCONDUCT, *supra* note 126, at 202).

[135] Giannetti, *supra* note 117, at 44.

[136] Ewin, *supra* note 52, at 7.

[137] *Id.* (quoting COMM'N OF INQUIRY INTO POSSIBLE ILLEGAL ACTIVITIES & ASSOCIATED POLICE MISCONDUCT, *supra* note 126, at 210).

[138] *See supra* note 88 and accompanying text.

What is more, the nature of police work is such that a strong sense of loyalty is essential to its being done effectively. Police work is often dangerous.[139] "Any officer who has unexpectedly found his or her life and limb in peril can affirm [the] practical importance [of loyalty] in the power evidenced by an 'assist officer' call."[140] It therefore follows that "[r]eciprocity is a core aspect of police loyalty, summed up in the assurance that officers extend to each other during an ordeal that, come what may, 'you cover my back, and I'll cover yours.'"[141] What this means in practice is that, due to the reliance upon one another that is essential to combating potentially dangerous suspects and surviving potentially fatal encounters, police officers are strongly inclined to come to the aid of one another, be it as an assist officer during a hazardous situation on the streets or as a willful denier of the misconduct of another officer.

Further cementing the norm of police officers' code of silence is the fact that police officers are often disciplined in a manner that focuses not on a given officer's state of mind, intentions, or his or her actions per se, but rather on the impact of those actions. What this means is that a highly visible or notable result of officer misconduct—one that is particularly "unhappy or tragic or politically embarrassing"—will be met by a harsher form of punishment than a result that is less likely to result in public outcry.[142] As a result of this uneven, result-oriented manner of disciplining officers, which is the norm in most police departments, police officers "live in constant fear of being reprimanded, suspended, or *fired*, even for an honest mistake."[143] Due to this fear, officers are further inclined to cover up for their colleagues; one can easily imagine making an "honest mistake" that, if not covered up, could lead to the loss of one's job. In

---

[139] In this regard, anti-snitching norms among police officers parallel the norms of noncooperation among military personnel discussed in Part II.B.1. In both instances, the dangerousness of the job is given primacy, and the need to form bonds of mutual trust among the rank and file is said to justify encouraging (if not requiring) members to remain loyal to one another by not reporting misconduct. But as shown in the discussion of whistleblowing in Part II.B.2., similar behavior (i.e., a norm of not reporting) emerges in relatively safe work environments. This suggests that, though the danger inherent in working as a soldier or police officer might provide a useful explanation of why anti-snitching norms persist, it by no means explains why these norms might have emerged in the first place or why they persist in other, non-dangerous organizational settings.

[140] Giannetti, *supra* note 117, at 47.

[141] *Id.*

[142] STAMPER, *supra* note 122, at 225.

[143] *Id.* at 134.

this way, police department disciplinary procedures further perpetuate the code of silence. It is for this reason as much as any other that "the first impulse of a lot of otherwise good and decent cops is to *lie* when called on the carpet."[144]

Though concerns about reciprocity and the notion of the police force as a form of family help to explain the persistence of the police code of silence, they do not render it any less problematic. As shown above, police officers frequently engage in a deliberate attempt to obscure the misconduct of other officers, from misrepresentations and perjury, to assault, theft, prisoner abuse, and murder. Though such behavior may engender a certain closeness within police departments, that police officers may wantonly disregard the law and their sworn oath to uphold it with little fear of being caught is clearly not in the best interests of society. In this regard the example of police officers' strict adherence to the code of silence mirrors similar norms within the military and in organizations that frown upon whisteblowing; in each case, group loyalty persists at the expense of loyalty to ethical principles, the strict adherence to which would in most instances result in increased rates of snitching and ultimately produce better results for society. Yet notably, none of these instances of privileging group loyalty over loyalty to more remote principles have drawn the same level of misunderstanding as Stop Snitching has in recent years.

Taken as a whole, this Part has shown that group members frequently develop a sense of loyalty to other members such that they are often torn when deciding whether to report misconduct. Members of the military, potential whistleblowers, and police officers all face the same conflict upon observing misconduct: are they to be loyal to their group or to principles and institutional imperatives compelling them to tell? Though some choose to abide by their principles, they do so at great costs, both internal and external. In the face of incurring these costs, the desire to be loyal to one's group most often overrides the desire to tell, even as reporting misconduct might, from an ethical and societal standpoint, be the right thing to do. As a result, a pronounced anti-snitching norm has evolved and has been permitted to persist within each of these strata of society.[145] The

---

144 *Id.*

145 It bears repeating that this norm is by no means confined to the military, nonmilitary organizations, and the police. *See supra* note 123 and accompanying text (noting that anti-snitching norms also exist among doctors, lawyers, the clergy, and journalists). Anti-snitching norms have also been observed in nonprofessional settings. *See, e.g.*, David L. Chambers & Steven K. Homer, *Honesty, Privacy, and Shame: When Gay People Talk*

following Part builds upon this showing by framing the Stop Snitching phenomenon as the manifestation of a conflict of loyalties very much akin to the ones referenced in this Part.

III

STOP SNITCHING AS A MANIFESTATION OF GROUP LOYALTY

Stop Snitching has most often been perceived either as a contemptible breach of the social contract or as a puzzling phenomenon lacking a sound logical basis.[146] This Part argues that interpreting it through the lens of loyalty shows that Stop Snitching can be not only ethically justifiable and logical but also, at times, prosocial. The primary form of loyalty that is relevant to assessing Stop Snitching is group loyalty. As noted above, defining "group" in the context of group loyalty can be difficult both because most people are members of many groups (e.g., family, labor union, congregation, team, etc.) and because the loyalty that a given group compels varies over time and from person to person.[147] Nonetheless, one's neighborhood or community has been recognized as a group with which one can experience a bond of loyalty.[148] As shown above, members of poor, black communities are likely to experience a stronger sense of community loyalty than members of other, less marginalized communities.[149] Focusing on how poor, black communities have been and continue to be policed, the following section discusses how oppositional law enforcement has strengthened

---

About Other Gay People to Nongay People, 4 MICH. J. GENDER & L. 255, 255 (1997) (noting the "longstanding convention among lesbians and gay men in the United States: Do not reveal the sexuality of a gay person to a heterosexual person . . . . Lie if necessary to protect her secret. Violating the convention by 'outing' another person is widely considered a serious social sin.").

[146] *See supra* notes 12–19 and accompanying text. Again, the assumption here is that those who question Stop Snitching on logical terms accept that there are ways to inform or cooperate with law enforcement officers without placing the informant or cooperator in harm's way. *See supra* notes 19, 22.

[147] *See supra* notes 55–57 and accompanying text.

[148] *See supra* note 62–63 and accompanying text; *see also* Friedkin, *supra* note 57, at 417 (discussing the manner in which a cohesive residential community can induce stronger forces on its members than one that is not cohesive). Though "neighborhood" may be defined in many ways, as Todd Clear has observed, "we may accept the importance of a neighborhood as an analytical construct without worrying too much (within reason) about the different ways the term may be operationalized in research." TODD R. CLEAR, IMPRISONING COMMUNITIES: HOW MASS INCARCERATION MAKES DISADVANTAGED NEIGHBORHOODS WORSE 70 (2007).

[149] *See supra* notes 58–67 and accompanying text.

group loyalty—and concomitantly promoted disloyalty to the state and the police—in such communities.

A. *Policing the Underclass and Its Modern Effects*

True to its inner-city Baltimore origins, Stop Snitching is most prevalent within, and most often associated with, poor, black communities in cities.[150] In order to appreciate the tugs of loyalty with which members of these communities must contend, it is important first to recognize the extent to which police have failed to create the types of bonds that would foster loyalty from poor, black citizens. As discussed below, poor citizens and people of color have long been targeted and mistreated by police, and in contemporary society, poor, black communities continue to be ravaged by modern police tactics that have resulted in astonishingly high incarceration rates. The combination of these factors helps to explain why law-abiding members of poor, black communities[151] often view police officers as adversaries rather than as advocates.

1. *Police History of Targeting the Poor and People of Color*

Tracing the evolution of American police forces back to the days of slave patrols, Kristian Williams notes that "[c]ontrol over the lower classes has been a function of policing at every point since the institution's birth, and has served as one of the major determinants of its development."[152] Though controlling the slave population was the primary objective of early police forces, after abolition police focused their attention on the poor. Laws targeted the poor, courts issued harsher judgments against the poor, and police officers "treated poor people with intense suspicion."[153] This tradition continues today in the form of "quality of life" and "zero tolerance" policies and the

---

[150] *See* Kahn, *supra* note 23, at 82 (noting incidents of refusal to cooperate with police in a number of American cities and attributing falling arrest and clearance rates with respect to violent crimes to a widespread lack of cooperation).

[151] James Forman notes that "even high-crime communities are made up principally of law-abiders" and that, though the youth within inner-city communities are "most likely to engage in criminal conduct," "most delinquent and criminal conduct is concentrated among a small percentage of young people." James Forman, Jr., *Community Policing and Youth as Assets*, 95 J. CRIM. L. & CRIMINOLOGY 1, 2–3, 6 (2004). The prevalence of Stop Snitching within poor, black communities suggests that a majority of its adherents are law-abiding citizens, thus begging the question of why they refuse to cooperate with the police.

[152] KRISTIAN WILLIAMS, OUR ENEMIES IN BLUE: POLICE AND POWER IN AMERICA 105 (rev. ed. 2007).

[153] *Id.* at 106.

"war on drugs," which disproportionately disrupt the lives of the poor.[154] The result of such policies, among others, is that, "[a]s a rule, poor people go to prison and others do not."[155]

As Williams notes, "though there are divergences between race and class, the means for control in each area have always been very closely linked."[156] As the poor have often been the target of police suspicion and harassment, so have people of color; there is no denying that "[t]he history of policing in the United States is marked by racial injustice and interracial conflict."[157] This history manifests itself today in the form of minority, urban community perceptions that many police officers are racist.[158] As one commentator has noted, "racism still plays an important role in urban politics and policing."[159] There can be no doubt that the poor and people of color have historically been, and continue to be, subject to heightened scrutiny and prosecution in jurisdictions throughout the United States.

---

[154] *Id.* For a discussion of the war on drugs and quality-of-life policies, see *id.* at 197–222.

[155] CLEAR, *supra* note 148, at 61. Clear reminds us that "[t]his pattern is as old as prison itself." *Id.*

[156] WILLIAMS, *supra* note 152, at 105.

[157] DAVID E. BARLOW & MELISSA HICKMAN BARLOW, POLICE IN A MULTICULTURAL SOCIETY: AN AMERICAN STORY 99 (2000).

[158] Eric J. Miller, *Role-Based Policing: Restraining Police Conduct "Outside the Legitimate Investigative Sphere,"* 94 CALIF. L. REV. 617, 623 (2006) ("The style and consequences of policing often lead to a public perception of institutional illegitimacy, where the minority, urban community internalizes the style and consequences of policing as race-based and racist."). Former Seattle police chief Norm Stamper's experience suggests that this suspicion is at least in some instances correct. In a chapter of *Breaking Rank* titled "Racism in the Ranks," Stamper discusses an investigation he conducted while he was a captain in the San Diego police force. He notes, "thirty of the thirty-one personnel (including my lieutenant and two of his sergeants) admitted to using racial and ethnic slurs." STAMPER, *supra* note 122, at 100. By way of example, Stamper explains, "African-Americans were niggers, boys, splibs, toads, coons, garboons, groids (from 'negroid'), Sambos, Buckwheats, Rastuses, Remuses, jigaboos, jungle bunnies, and spooks. Latinos were greasers, wets, wetbacks, beans, beaners, bean bandits, chickenos, spics." *Id.* Though Stamper's investigation took place decades ago and is not necessarily reflective of the opinions and candor of other police departments, it is worth noting because it illustrates the fact that perceptions of racism within police departments are, at least in some instances, well founded.

[159] Lawrence Rosenthal, *Policing and Equal Protection*, 21 YALE L. & POL'Y REV. 53, 61 (2003); *see also* Albert W. Alschuler & Stephen J. Schulhofer, *Antiquated Procedures or Bedrock Rights?: A Response to Professors Meares and Kahan*, 1998 U. CHI. LEGAL F. 215, 223 (noting that "police racism cannot be dismissed as a relic of the past").

2. *Mass Incarceration and Community Member Disloyalty*

a. *The Indirect Effects of Mass Incarceration*

Whether attributable to targeting the poor, racism, or other less invidious reasons, it is clear that modern policing has had a particularly profound impact on the poor, black communities in which Stop Snitching is most prominent. As a result of a series of policy choices, the U.S. prison population grew every single year between 1973 and 2008.[160] That year, the overall incarcerated population reached an all-time high, "with 1 in 100 adults in the United States living behind bars."[161] This growth has had its most significant impact on one subgroup of the population: young, poorly educated black men from impoverished communities. About one in ten black men with high school diplomas is currently in prison or jail.[162] Among black male high school dropouts, the incarceration rate is 37% (compared to the average incarceration rate of the general population, 0.76%).[163] And of black male dropouts born between 1975 and 1979, an astonishing 68% have prison records.[164] Overall, "[b]lack men are seven times more likely to go to prison than are

---

[160] *See* CLEAR, *supra* note 148, at 16, 50; PEW CENTER ON THE STATES, PRISON COUNT 2010: STATE PRISON POPULATION DECLINES FOR THE FIRST TIME IN 38 YEARS 1 (2010) [hereinafter PRISON COUNT 2010], *available at* http://www.pewcenteronthestates.org /uploadedFiles/Prison_Count_2010.pdf?n=880 ("In the nearly five decades between 1925 and 1972, the prison population increased by 105 percent; in the four decades since, the number of prisoners grew by 705 percent."). Michelle Alexander notes that, "[i]n 1972, fewer than 350,000 people were being held in prisons and jails nationwide, compared with more than 2 million people today." MICHELLE ALEXANDER, THE NEW JIM CROW 8 (2010).

[161] PRISON COUNT 2010, *supra* note 160, at 1. The silver lining is that, as of January 1, 2010, there were 0.3% fewer state prisoners than there were on December 31, 2008, which "marks the first year-to-year drop in the state prison population since 1972." *Id.* The total U.S. prison population continued to rise, however, as the decrease in the state prison population was offset by a larger increase in the federal prison population. *Id.* The United States' incarceration rate "is about seven times higher than the West European average and is approached only by rates in the penal systems of some former Soviet republics and South Africa." Christopher Wildeman & Bruce Western, *Incarceration in Fragile Families*, FUTURE CHILD., Fall 2010, at 157, 159, *available at* http://www .futureofchildren.org/futureofchildren/publications/docs/20_02_08.pdf.

[162] Bruce Western & Becky Pettit, *Incarceration and Social Inequality*, DAEDALUS, Summer 2010, at 8, 10 fig.1.

[163] *Id.* at 10.

[164] *Id.* at 11 tbl.1.

white men."[165] Familiar (and troubling) as these statistics might be, it is not the statistics themselves that are of importance here. Rather, it is the effect of mass incarceration of poor, black men on their neighborhoods that deserves special attention, for it helps illuminate why law-abiding members of such communities might be reluctant to cooperate with law enforcement in catching, prosecuting, and ultimately imprisoning additional community members.

Though it might seem obvious at first blush that incarcerating those who break the law has a positive social effect, such is not always the case. The incarceration model of crime control works best for communities in which few people are incarcerated and the disruption caused by their removal is minimal.[166] In such communities, due to higher rates of human and social capital, criminals (few and far between) can be sent away to prison and return home without disrupting the fabric of the community as a whole.[167] As a result, the cost of incarcerating a criminal is borne primarily by him and his immediate family, not by the community as a whole.

But in certain poor, black communities, where "incarceration is a dominant dynamic," [168] the effects of incarceration are far more significant. As Dan Kahan has noted, "massive incarceration, particularly when concentrated on minority, inner-city communities, disrupts social organization and taxes institutional legitimacy."[169] Though one of the justifications for incarcerating individuals is the amelioration of the problems of those who live in high-crime communities, when incarceration becomes too commonplace within a given community, it can have the opposite effect.[170]

---

[165] CLEAR, *supra* note 148, at 63; *cf.* Wildeman & Western, *supra* note 161, at 160 (noting that one in five black men born between 1975 and 1979 experienced imprisonment, compared to one in thirty white men born during the same period).

[166] *See* CLEAR, *supra* note 148, at 80–82.

[167] *See id.*

[168] *Id.* at 65. Clear explains that

> [s]ome neighborhoods have dominant numbers of residents either on their way to prison, in prison, or recently released. Sections of Washington, D.C. have been estimated to have one in five adult males behind bars on a given day. In Cleveland and Baltimore, there are neighborhoods with more than 18 percent of the males missing because they are behind bars. For black children living in poor urban neighborhoods, having a close family member in prison or jail is commonplace.

Id. at 64 (citation omitted).

[169] Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 CALIF. L. REV. 1513, 1523 (2002).

[170] CLEAR, *supra* note 148, at 93.

Elevated incarceration rates exacerbate the problems these communities already face in two important ways. First, they increase social instability within already unstable communities. Because so many men from within these communities go to prison or jail, there is a constant cycle of men leaving the community and returning some years later. Both the point of exit and the point of reentry have the potential to be disruptive, and where the cycling takes place frequently throughout the community, further incarceration of community members can act as a destabilizing force having numerous negative effects.[171]

Second, elevated incarceration rates within a community mean that, on a fairly routine basis, men upon whom other members of the community regularly rely can, for a not insignificant period of time, no longer be relied upon. In this way, as Todd Clear notes, to view people who break the law as "merely bad" is

> a one-sided stereotype that not only ignores the assets they present to the networks in which they engage but also fails to account for the ways they benefit their environment. It also fails to recognize the damage done to their other relational networks when they are incarcerated—networks often consisting of nonoffending family members, relatives, and friends.[172]

As this quotation suggests, elevated incarceration rates impose costs not only upon those who break the law and are subsequently imprisoned, but also on other members of the community who suffer in their absence.

Clear divides these community costs of mass incarceration into three categories: the costs to familial systems, the costs to economic systems, and the costs to political systems. Examples of disruptions to familial systems are numerous and include interrupted parenting, the loss of role models and children receiving less supervision, increased single-parent homes with mothers on welfare, and the normalization of incarceration.[173]   There are both micro- and

---

[171] *Id.*; *see also id.* at 73–75 (discussing the "increasing levels of disorganization" that result from incarceration and reentry and the general effects of high turnover on communities).

[172] *Id.* at 87.

[173] *Id.* at 88; *see also id.* at 94–106 (discussing familial systems costs in greater detail). Wildeman and Western note that researchers have demonstrated an elevated risk of criminality, delinquency, and physical aggression for boys who have an incarcerated parent and that children of incarcerated parents are statistically at an elevated risk of homelessness, foster care placement, and infant mortality. Wildeman & Western, *supra* note 161, at 168.

macroeconomic costs to mass incarceration within communities. At the microeconomic level, because "most prisoners are an economic resource to their neighborhoods and immediate families" prior to incarceration, when a work-age male goes to prison, some of his economic activity is lost.[174] At the macroeconomic level, mass incarceration shifts government funds from improving inner-city communities toward funding penal institutions.[175]

The political systems costs of mass incarceration within poor, black communities are perhaps the most important. Members of these communities are confronted with an "overwhelming presence of the American criminal justice system," and as a result, the state is often encountered as "a coercive agent of control rather than a fair agent of justice."[176] Many inner-city children thus "define the power of the state as a nemesis to be avoided rather than an ally to be cultivated," and "disillusionment with the political structure often erodes residents' feelings of empowerment and reduces their willingness to participate in local politics."[177] This in turn reduces the likelihood of citizen involvement within these communities, which makes efforts aimed at community improvement even more challenging.[178]

The community costs described above suggest some of the ways that the incarceration of significant portions of a neighborhood's population can promote, rather than reduce, crime and worsen, rather than improve, communities. Losing the familial and economic

---

[174] CLEAR, *supra* note 148, at 88. Putting a number to the economic loss suffered as a result of incarceration, Wildeman and Western observe that "incarceration diminishes men's earnings by up to 30 percent even long after leaving prison." Wildeman & Western, *supra* note 161, at 165.

[175] CLEAR, *supra* note 148, at 89; *see also id.* at 106–11 (discussing economic systems costs in greater detail).

[176] *Id.* at 89.

[177] *Id.*

[178] *Id.*; *see also id.* at 111–17 (discussing political systems costs in greater detail). Wildeman and Western take this critique a step further, asserting as an implication of their research the irony that "mass incarceration may cause crime in both the short and long term," thus making it a root cause of citizen indifference to or distaste for law enforcement officers. Wildeman & Western, *supra* note 161, at 170. Further pointing the finger, these authors add that, "[b]y further diminishing the life chances of the children who grow up in fragile families, mass imprisonment may entrench a vicious circle in which the disadvantages wrought by being born into a fragile family are further compounded by the criminal justice system, thereby generating greater future inequality." *Id.* In this vein, it is no wonder that members of communities hardest hit by mass incarceration are less likely to cooperate with the police. *See id.* (noting that "U.S. crime policy has, in the name of public safety, produced more vulnerable families and probably reduced the life chances of their children").

contributions of so many working-age men has a profound effect on these communities, as it forces nonoffending members to make up for the loss by whatever means they deem necessary and appropriate under the circumstances. And the disillusionment with the state that mass incarceration fosters has ripple effects that will impact these communities for many years to come and can stand as a long-term obstacle to widespread community improvement.

b. Not Snitching as Prosocial

In light of these costs, many law-abiding residents of poor, black communities face something of a conundrum when deciding whether to report the crimes of their fellow community members.[179] On the one hand, they recognize that wrong is wrong, that those who commit crimes should be punished, plain and simple. Viewing crime in this way counsels in favor of remaining loyal to the state by cooperating with the police. On the other hand, these law-abiding community residents have observed that it is often not the perpetrator who bears the brunt of his punishment, but rather his family members, the others who have relied upon him, and, cumulatively, the community as a whole. Accounting for these factors turns deciding whether to report a given crime into a cost-benefit analysis, one that in many instances counsels in favor of being disloyal to the state (by refusing to cooperate) in the name of remaining loyal to the interests of the community.

Viewed in this way, the ethical contours of reporting a crime or cooperating with a police investigation can at times be unclear, as the decision hinges upon a series of assumptions meant to gauge the costs and benefits of each option. To be sure, such an analysis is more art than science, but one can certainly imagine a witness who, though law-abiding and generally loyal to the state, might decide not to report a crime where the perpetrator is a community member, the loss of whom (through incarceration) the witness deems likely to do more harm than good for the community. Such a witness's decision not to snitch represents a privileging of community loyalty over loyalty to the state, one that is not only understandable, but also justifiable on ethical grounds. The decision not to cooperate with law enforcement

---

[179] Though not identical, this conundrum is not unlike that which an honest policeman faces in deciding whether to turn in a fellow officer who has violated the law. *See supra* note 125 and accompanying text. In each instance, a law-abiding individual must decide whether to be loyal to a fellow group member or to be loyal to more remote principles of right and wrong.

investigations can thus, at times, be viewed as prosocial or beneficial to society, even as it does not promote the state's primary interest in this regard—solving crimes.

The importance of community loyalty to understanding Stop Snitching extends beyond cost-benefit analysis, however. As Fletcher reminds us, though loyalty is a product of the historical self and one's lived experiences, loyalty often surfaces in a space beyond the realm of "scientific neutrality" and "intellectual impartiality."[180] It can be inspired, cultivated, or solidified as much by emotion or whimsy as by experience or calculation. The following section discusses the significant role that community loyalty plays in shaping the decision whether or not to cooperate with the police, separate and apart from the perceived costs and benefits of doing so.

B. Beyond Cost-Benefit Analysis: To Snitch or Not to Snitch?

It is axiomatic that cooperation with the police is not required by law,[181] and a cooperating witness must endure at least some costs. As Kahan has noted, "[w]hen individuals report crimes, they expose themselves at a minimum to inconvenience, and possibly worse—the risk of violent retaliation at the hands of those they are reporting."[182] What is more, due to the high societal value ascribed to loyalty across cultures and over time, snitching—a violation of personal loyalty—is generally disfavored. As one commentator observed, the act of requesting witness cooperation "places law enforcement in the anomalous position of sanctioning disloyalty and rewarding betrayal."[183] As discussed at length above,[184] nobody likes a snitch, and in relying upon snitches, police "disregard a taboo"[185] by

---

[180] *See supra* note 149 and accompanying text.

[181] *See* BUTLER, *supra* note 25, at 96 (noting that, although there is a federal law making it a crime to conceal a felony and some states have enacted "misprison of felony" statutes mirroring this federal law, U.S. law requires "active concealment of a crime" for someone to be in violation of the law, and "no conviction for a state misprison of felony offense has been upheld since 1878").

[182] Kahan, *supra* note 169, at 1524.

[183] Gordon Mehler, *Informants, Rats, and Tattletales: Loyalty, Fear, and the Constitution*, CRIM. JUST. ETHICS, Winter/Spring 1997, at 2, 2; *see also* FLETCHER, *supra* note 44, at 79 ("The state should not force people to betray their commitments to their friends, lovers, family, community, or God."); *id.* at 95 ("The legal system should not intrude upon relationships of loyalty.").

[184] *See supra* Part II (discussing the persistence of the desire to be loyal by not snitching on one's peers).

[185] Mehler, *supra* note 183, at 2.

promoting behavior that in other circumstances they and most others would deem reprehensible.[186]

The stakes are particularly high when police ask a witness to snitch on a fellow community member. In such situations, due to the "deep-seated need for strong personal ties and loyalties" among individuals, overreliance on intra-community witness cooperation "creates grave problems for a society that can lose all sense of its humanity because its members lose much of their feelings for those near to them."[187] Intra-community witness cooperation can thus be viewed as a type of disloyalty that, if arising too frequently, can have a corrosive long-term effect.

In deciding whether or not to snitch on a member of one's community, one must assess the pros and cons of doing so in light of personal and situational circumstances. For many, particularly those who have infrequent, positive encounters with the police, the choice is an easy one; absent a particularly compelling reason not to (such as a credible threat), they will cooperate. Notably, there is generally no concern about the long-term community effects of cooperating with the police for witnesses in this scenario because community corrosion arises primarily as a result of iterative processes—particularly cyclical incarceration and reentry[188] and frequent intra-community witness cooperation.

For members of communities in which there are frequent, often negative encounters with police, however, the decision can be far more complicated. To be sure, many of these community members will in most instances seek to cooperate. But for others, police tactics, past and present, weigh heavily on their decision-making process.

As noted above, police have consistently targeted the poor and people of color, and poor, black men have been most affected by recent societal trends resulting in unprecedented levels of incarceration.[189] Potential witnesses from within poor, black communities have in many cases observed police misconduct and the scourge of police officer "warrior tactics,"[190] and they understand

---

[186] *See supra* Part II.C (discussing anti-snitching norms among police officers).

[187] Mehler, *supra* note 183, at 2 (internal quotation marks omitted).

[188] *See supra* note 171 and accompanying text.

[189] *See supra* notes 156–65 and accompanying text.

[190] *See* Forman, *supra* note 151, at 20 (noting that "inner-city young people" are generally policed "under the warrior model—as threats to public order" rather than as potential collaborators). Forman also relates that, within these communities, "the young

firsthand the direct effects that placing a community member in prison can have on his family, the local economy, and the community at large.[191]   It should come as no surprise that, when faced with resolving this conflict of loyalty—to the state (as manifested by a police force that is perceived as rarely on their side) on one hand, and to their fellow community member on the other—many members of such communities side with the latter by keeping their mouths shut. In light of their relationship with, and perception of, law enforcement—and in contrast to the members of other communities described above[192]—members of these communities might quite reasonably ask, "Why would I ever want to help the police in any way, shape, or form?"[193]

Nonetheless, there exist a number of circumstances in which even the most staunch antipolice community members might cooperate. Such circumstances include helping to solve a particularly grisly or egregious crime, a crime committed against a potential witness or one of his or her loved ones, or a crime committed by a particularly loathsome criminal. But as to more ordinary crimes—committed in environments in which crime is far too ordinary—the failure of police departments to create meaningful bonds with community members explains why so many might refuse to help law enforcement officers solve crimes as a matter of principle.

The conflict of loyalties these potential witnesses must resolve is at bottom no different from any of the loyalty conflicts described in Part II. It is a highly individualized choice that can prove difficult, just like deciding whether to tell on a colleague, classmate, or fellow

---

are (statistically significantly) more likely to be both disrespected and illegally searched." *Id.* (citations omitted). One study of police use of force has found that, as a general matter, "officers were (statistically significantly) more likely to use force on males, nonwhites, the young, and the poor." *Id.* at 20–21; *see also infra* notes 211-212 and accompanying text (describing the "warrior model" of policing).

[191] *See supra* Part III.A.2.a (discussing the negative effects mass-incarceration has had on poor, black communities).

[192] *See supra* note 18 and accompanying text.

[193] It is worth reiterating that this refusal to cooperate, though sharing some characteristics, is distinct from the refusal to cooperate that arises out of the cost-benefit analysis discussed in Part II.A.2.b. Whereas the focus there was whether the community and its members would benefit from a given offender's incarceration, the focus here is on whether the police have earned a witness's loyalty such that he or she feels compelled to cooperate in connection with a given crime. Though some of the same factors are given weight under both modes of deciding whether to cooperate—and though both will in many instances produce the same result—it should be understood that there exist scenarios in which a cost-benefit analysis dictating that one should cooperate would be undermined by a sense of loyalty dictating that one should not, and vice versa.

soldier or officer. Though resolving this conflict of loyalties is simple for many—particularly those who view the police as allies—where one's "historical self" has arisen out of a marginalized community such as those in which Stop Snitching is most prominent, skepticism toward, and reluctance to cooperate with, police is as understandable as it is common. That this skepticism and reluctance come as a surprise to so many reflects the societal gap[194] that exists between poor, black communities and the white middle class that is traditionally considered the mainstream of American society, particularly with respect to perceptions of the police.[195]

It is this perceptual dissonance that underlies the existing, misguided understandings of Stop Snitching. But once recognized as a manifestation of loyalties in conflict akin to the others noted above, the decision not to cooperate with the police can be read as being both reasonable and ethically sound, even where it does not arise out of a cost-benefit analysis such as the one described in the previous subsection[196] or out of fear for one's safety. Though by now the justifiability of Stop Snitching should be clear, a few words about the perils of external assessments of individual loyalty choices might be useful in swaying the unconvinced.

---

[194] Barlow and Barlow describe this gap in the following way:

> [w]hether they are police officers or everyday citizens, white people are baffled by the lower level of support for police among racial minorities, particularly African Americans. In our various interactions with police officers, young and old, we have often heard them express genuine astonishment at small African-American children expressing distrust or even hatred toward them as police officers.

BARLOW & BARLOW, *supra* note 157, at 118. This difference in perception relates back to Fletcher's notion of the historical self. Barlow and Barlow continue:

> What these white people do not appreciate, and what Black people are unable to forget, is the whole history of racial discrimination and mistreatment at the hands of the police. The police and the entire criminal justice system are deeply implicated in the ghetto—in its formation and in its permanence.

Id. at 119.

[195] *Id.*

> The vast majority of white Americans, particularly those in the middle and upper classes, have never experienced the police as violent, uncaring oppressors. They have no frame of reference for envisioning the police as a serious threat to their lives. They cannot appreciate the claims of racial minorities concerning systematic police discrimination and brutality.

Id. This disconnect plays a meaningful role in making Stop Snitching seem inexplicable or condemnable to many outside observers.

[196] *See supra* Part III.A.2.b.

With respect to matters of loyalty, external second-guessing is seldom of much use. Though Fletcher argues that every member of society has higher and lower loyalties—and that higher loyalties "seem to have a greater moral claim on us than our more immediate attachments to family and friends"[197]—sound morality does not dictate that we always privilege the former over the latter. "Though the higher, more abstract planes . . . often compel our loyalty," Fletcher writes, "we are blessed with the capacity to reject the sirens of abstraction and to commit ourselves to the bonds of our immediate and concrete lives."[198] In other words, notwithstanding the general observation that higher loyalties (such as loyalty to the state) should trump lower loyalties (such as loyalty to the community), the decision to privilege one over the other cannot be mechanical. Humans are not automatons, and to impugn another individual's judgment with respect to a hard loyalty choice is to reject his or her humanity. Put plainly, "[a]bsolute loyalty deprives us of our critical judgment; impartial ethics, of our human sensibilities."[199] Though some might argue that sound ethics compel all witnesses to cooperate under all circumstances (absent scenarios in which they might be harmed as a result), such a doctrinaire approach both obscures the complexity of such a decision[200] and fails to account for the individualized, human circumstances underlying the resolution of any conflict of loyalties. Viewed this way, it seems particularly inappropriate for outsiders to judge Stop Snitching to be something that is egregious or peculiar. Rather, it should be understood as representing a set of personal choices not unlike those that all individuals regularly must make in resolving the numerous loyalty conflicts that arise in their lives.

C. *Revisiting Izzy Ramirez*

Let us now return to Izzy Ramirez, whose 2007 murder, witnessed by roughly seventy-five people, remains unsolved. Though Izzy's killer should be found, prosecuted, and punished pursuant to any reasonable theory of justice, whether the witnesses who observed the shooting should feel ethically compelled to cooperate with the police

---

[197] FLETCHER, *supra* note 44, at 154.

[198] *Id.*

[199] *Id.* at 172.

[200] *See* BUTLER, *supra* note 25, at 91–92 ("The cultural codes against snitching also teach us that people who refuse to snitch are not, as they are sometimes depicted, lawless. Rather, they are confronted with competing rules—outside versus inside, state versus community, external versus clan.").

in furtherance of this just result is a distinct question. What is required, then, in assessing this witness behavior, is further exploration of the root issue—why might it be that none of these witnesses will cooperate even as their noncooperation acts to frustrate justice?

For many of these witnesses, it may be that they are unwilling to cooperate because they reasonably fear for their safety. Others might share this fear, but less reasonably so—after all, given modern technology, there are numerous ways to tip off the police without fear of reprisal.[201] Some might know the shooter personally and, estimating the costs and benefits of turning him in to face a lengthy prison sentence, have determined that the former outweigh the latter. But there exists a fourth group of witnesses, those who, echoing Cameron Giles,[202] simply want nothing to do with police officers and have no interest in helping them do their jobs. These witnesses— perhaps due to peer influences, perhaps due to the experiences that have shaped their "historical selves"—have adopted an ethos pursuant to which the police are the enemy, an external, oppositional force to which they have no desire to express their loyalty.

Though condemning these witnesses in ethical terms is as easy as it is common, failure to understand the reasons why they might so steadfastly refuse to promote the just prosecution and imprisonment of Izzy's killer renders any analysis of their actions fatally incomplete. In an ideal world, all citizens would feel compelled at all times to privilege loyalty to the state in furtherance of the prosecution of bad actors over other, lower loyalties.[203] But such is not always the case. Often, for good reason, not all citizens feel equally the compunction to be loyal first and foremost to the state; the seventy-five witnesses who to this day refuse to identify Izzy's killer underscore this point.

That said, acknowledging the reasonableness of an individual's decision not to cooperate under certain circumstances does not require one to ignore the negative impact that widespread noncooperation can

---

[201] *See supra* notes 19, 22.

[202] *See supra* note 37 and accompanying text.

[203] *See* FLETCHER, *supra* note 44, at 154 ("The higher, more abstract values of God and country seem to have a greater moral claim on us than our more immediate attachments to family and friends."). But as noted, Fletcher immediately observes that "this structure of values often gets turned around," and he adds that humans are blessed with the ability to choose freely which loyalty to privilege in a given set of circumstances. *Id.*

have on communities.[204]   In other words, one can simultaneously both recognize the ethical legitimacy of individuals' choosing not to cooperate with the police and hope to eliminate Stop Snitching and the circumstances that created it.   In that vein, the following Part offers strategies police officers should employ in order to change the witness-cooperation dynamic within frequently disloyal communities.

IV

CREATING LOYALTY WITHIN FREQUENTLY DISLOYAL COMMUNITIES

The recognition that Stop Snitching can be read as a reflection of the weakness of existing loyalty bonds between the police and certain communities suggests strategies for bringing it to an end. Put simply, police officers seeking cooperation should attempt to find ways to give disloyal community members greater incentive to be loyal to the state.   To do so, they must reach out to community members by listening to their concerns, providing assistance, and, ultimately, forming meaningful relationships. Though the strategies for doing so discussed below might be familiar to those versed in the literature on community policing, focusing these strategies on strengthening loyalty bonds—as opposed to the broader objective of reducing crime—will render them particularly powerful tools in curtailing and ultimately eliminating Stop Snitching.[205]

In *Reciprocity, Collective Action, and Community Policing*, Dan Kahan succinctly describes the factors at play in fostering higher rates of community cooperation with police investigations.[206] He writes,

> Citizens are more disposed to cooperate with police when institutions enjoy a high level of legitimacy.   The perceived legitimacy of an institution, it has been shown, depends largely on whether citizens perceive that they are receiving fair and respectful treatment by police and other decision makers. In effect, citizens

---

[204] *Cf. supra* Part II.C (acknowledging the numerous reasons that police officers adhere to the blue code of silence while noting its harmful effects).

[205] It is axiomatic that reducing crime is exceedingly challenging, far more so than reducing the incidence of witness noncooperation. Whereas the former has numerous underlying social, economic, psychological, cultural, and political causes, the latter, as argued here, ultimately comes down to relationships.   Though community-policing initiatives have had mixed results in reducing crime, there is reason to believe that repurposing the tactics arising out of the literature on community policing could prove a significant factor in increasing target-community witness cooperation.

[206] Kahan, *supra* note 169, at 1524–25.

> reciprocate respectful treatment with cooperation and obedience and disrespectful treatment with resistance. . . .[207]

Stop Snitching is one form of resistance employed by community members in response to disrespectful treatment by the police. Combating Stop Snitching thus requires police officers to invert the perception that they do not respect community members, to cast themselves as collaborators rather than foes. The best ways to create this inversion arises out of the literature on community policing, a movement that began more than thirty years ago and remains prominent in various forms today.

Though community policing arose out of a variety of sources, "of central importance was the growing consensus in the 1970s and 1980s that police-community relationships in many cities had become untenable."[208] Prior to and during this era, many police departments and officers "subscribed to the 'warrior model' of the detached, aloof crime-fighter who daily battles the hostile enemy—the public."[209] Even more so than today, police officers in this period frequently cast themselves in opposition to the public. As rising crime rates and academic research began to suggest that the warrior model was not working, police forces reconsidered their tactics. Out of this reconsideration arose community policing, a movement which—recognizing that in even the most crime-ridden communities there was a thirst for more and better police protection—sought "to replace the warrior model with one premised on the notion that the police and community could become co-producers of public safety, rather than hostile antagonists."[210]

Though public safety and the reduction of crime have been and remain the primary targets of community policing, its strategies inform efforts aimed at increasing witness cooperation. Essential to all successful community-policing programs are efforts to reach out to high-crime communities in order to establish mutual trust between police officers and community members.[211] As a Justice Department

---

[207] *Id.* at 1525.

[208] Forman, *supra* note 151, at 4.

[209] *Id.* at 4–5; *see also supra* note 192 and accompanying text (discussing the "warrior model" of policing).

[210] Forman, *supra* note 151, at 6.

[211] Forman reminds us that "even high-crime communities are made up principally of law-abiders" and that, though the youth within inner-city communities are "most likely to engage in criminal conduct," "most delinquent and criminal conduct is concentrated among a small percentage of young people." *Id.* at 2–3, 6. This reminder underscores the

report noted in a monograph titled *Understanding Community Policing*, "[t]rust is the value that underlies and links the components of community partnership and problem solving. A foundation of trust will allow police to form close relationships with the community that will produce solid achievements. Without trust between police and citizens, effective policing is impossible."[212] Specific to witness cooperation, the monograph notes that,

> [w]ithout strong ties to the community, police may not have access to pertinent information from citizens that could help solve or deter crimes.
>
>   Helpful information will be forthcoming from community members when police have established a relationship of trust with the community they serve. . . . Only when community members believe the police are genuinely interested in community perspectives and problems will they begin to view the police as part of that community.[213]

Accepting that creating bonds of trust is essential to increasing the sharing of information pertinent to criminal investigations, the question of how best to do so remains. The answer, though seldom effectively employed, is simple: police must develop positive relationships with community members.[214] Numerous strategies exist, including supplementing police car patrols with foot, bike, and horseback patrols; becoming more familiar with community members; more effectively helping community accident or crime victims and providing timely emergency and medical services; helping community members improve neighborhood conditions; visiting community members at their homes; and treating community members with greater respect, particularly by reducing "[t]he use of

---

fact that distrust, rather than fear of detection, most often plays the more significant role in fostering noncooperation.

[212] BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T JUSTICE, UNDERSTANDING COMMUNITY POLICING: A FRAMEWORK FOR ACTION, at vii (1994), *available at* www.ncjrs.gov/pdffiles/commp.pdf; *see also* Tracy L. Meares, *It's a Question of Connections*, 31 VAL. U. L. REV. 579, 590 (1997) ("The mutual distrust between African Americans and law enforcement officers makes it less likely that African Americans will report crimes to the police, assist the police in criminal investigations, and participate in community policing programs . . . .").

[213] BUREAU OF JUSTICE ASSISTANCE, *supra* note 212, at 5.

[214] *See id.* at 13 ("To develop community partnership, police must develop positive relationships with the community, must involve the community in the quest for better crime control and prevention, and must pool their resources with those of the community to address the most urgent concerns of community members.").

unnecessary force and arrogance, aloofness, or rudeness" directed toward them.[215]

Done simultaneously, these upgraded services, frequently carried out through informal channels,[216] will help to develop a greater sense of trust between the police and the communities in which Stop Snitching is a prominent norm. This trust will in turn "enable the police to gain greater access to valuable information from the community that could lead to the solution . . . of crimes."[217]

To be sure, reversing a cultural trend as prominent as Stop Snitching will prove challenging; altering the perceptions and attitudes of officers and community members alike will take time and require a great deal of hard work. But there is reason to be optimistic, for it has been shown that once bonds of trust between community members and the police are established, they frequently tend to flourish. As Kahan has observed, "[a]s citizens start to cooperate more and otherwise become more favorably disposed toward the police, the police form a more positive view of members of the community."[218] As a result, police officers become "more disposed to treat citizens with respect in their daily encounters, both because they fear them less and because they value their goodwill more. Treated more respectfully, citizens can be expected to reciprocate by behaving even more cooperatively."[219] In this way, the relationship spirals toward greater mutual trust; where once a culture of noncooperation had been the norm, a culture of collaboration can emerge.

The Chicago Alternative Police Strategy (CAPS), a pioneering form of community policing begun in the early 1990s, underscores Kahan's assertion about the cumulative effect that effective community policing can achieve. In the wake of CAPS, community members "long accustomed to seeing the police as simultaneously indifferent to their needs and disrespectful of their rights, now were exposed to highly responsive and solicitous officers. Unsurprisingly, citizens grew more trustful and thus more willing to cooperate with

---

[215] *Id.* at 16; *see also id.* at 14–17.

[216] Forman underscores the importance of informal contact between police officers and community members, noting that "informal contacts matter to community policing" and "are important to fighting crime and disorder, for they are part of how police learn about who is doing what, and who can be relied on." Forman, *supra* note 151, at 19.

[217] BUREAU OF JUSTICE ASSISTANCE, *supra* note 212, at 16.

[218] Kahan, *supra* note 169, at 1533.

[219] *Id.*

the police."[220] Illustrating the cumulative potential of a relationship built on mutual trust, CAPS officers ultimately "reciprocated the citizens' greater willingness to cooperate with them by treating citizens more respectfully, thereby generating an even greater willingness among citizens to cooperate with the police."[221]

By being responsive and solicitous, the Chicago police have been able to strengthen mutual trust and increase community cooperation. Though programs such as CAPS are aimed primarily at crime reduction and prevention, their success is instructive with respect to reducing and ultimately eliminating Stop Snitching in two ways. First, it shows that community policing can meaningfully improve target-neighborhood attitudes toward the police. This is so even within communities that have had past relationships with the police characterized primarily by antagonism. As relationships improve, loyalty to the state will inevitably increase, thereby increasing the frequency with which witnesses cooperate. Second, community-policing successes show that significant and widespread attitudinal changes can happen quickly. Because trust accrues cumulatively through reciprocal positive interactions, once community attitudes begin to shift, there is the potential for them to evolve drastically in a relatively short period of time. This observation suggests that it is possible for stronger bonds of loyalty to the state to emerge in a short period of time, and that the Stop Snitching norm can be eradicated almost as quickly as it emerged.

Taken as a whole, it is clear that community-policing tactics aimed specifically at increasing witness cooperation in targeted communities can succeed. To the extent police officers are serious about fostering a greater sense of loyalty and increased witness cooperation from within poor, black communities, they would be best served by adopting these tactics.

CONCLUSION

Stop Snitching has been misunderstood as either inexplicable human behavior or evidence of widespread ethical decay. The reality is that it is best understood as a manifestation of a widespread privileging of community loyalty over loyalty to the state. For some members of the poor, black communities that have been ravaged by mass incarceration, the decision not to report crimes or cooperate with

---

[220] *Id.* at 1537.

[221] *Id.*

police investigations arises out of an understanding that facilitating the imprisonment of a community member can hurt rather than help the community. For others, it is their antagonism toward the police, whom they view as hostile, disrespectful interlopers, that drives their decision not to snitch. In both cases, it is clear that for these witnesses loyalty to the community takes primacy over loyalty to the state.

When loyalties conflict, one must necessarily privilege one loyalty over another. Resolving conflicts of loyalty is always a challenge, and choosing which of two conflicting loyalties to privilege is both highly individualized and situational. Just as deciding whether to tell on a classmate, fellow officer, or workplace colleague can often prove vexing, so can deciding whether to report the crimes of fellow community members. In each of the realms discussed in this Article, there is a pronounced norm in favor of privileging loyalty to one's immediate peer group and its members over loyalty to higher principles or more remote institutions. In this vein, Stop Snitching— the privileging of community loyalty over loyalty to the state—is neither exceptional nor unique in how it resolves an ethical conflict.

Nonetheless, one can acknowledge that from a societal standpoint, widespread noncooperation with police is a behavior that should be curtailed and, ideally, eliminated. Key in doing so is recognizing the root cause of Stop Snitching's prevalence—weak loyalty bonds between police officers and the communities in which Stop Snitching is most prominent. Once this cause is recognized, it becomes clear that Stop Snitching can be eliminated only through efforts aimed at strengthening these bonds. Experiments in community policing over the past three decades have shown that community attitudes toward police officers can change pervasively in a short period of time. Borrowing tactics from community policing aimed at fostering mutual trust between police and community members is therefore the best approach to eliminating Stop Snitching, for trust is the first step toward creating stronger bonds of loyalty. There is reason to believe that if done properly such efforts would be successful and that Stop Snitching could be a distant memory in a few years' time.