

Making Homes Safer with Safe Homes: A Look At the Controversial Way Boston Attempted to Reduce Youth Violence

“On March 27, [2007], an 11-year-old boy walked into the John P. Holland elementary school in Boston with a .44 caliber magnum handgun. The gun was taken out of his prepubescent hands before any violence occurred. On June 24, 8-year-old Liquarry Jefferson was needlessly shot to death by his 7-year-old cousin. Liquarry, who attended the Holland School, was one of the city’s youngest victims in nearly a decade. Last week, a 16-year-old father with roots in Mattapan, stalked and killed a 17-year-old in broad daylight while horrified witnesses watched. These incidents send a profound message—the culture of violence is ultimately not about law and order; it is about the reestablishment of moral and cultural order and a search for new strategies that inform a meaningful effort to save a lost generation of urban youth.”¹

I. INTRODUCTION

Today, in the United States, a child or teenager is shot to death about every three hours—almost eight fatalities per day.² After a decline in violent crime during the 1990s, police across the country started to see an increase in violence; many officials attributed the uptick to a surge in violence committed by youth.³ Beginning in 2005, Boston, Massachusetts, started experiencing a dramatic rise in its number of homicides.⁴

In Boston, the number of shooting victims under age seventeen tripled over the last five years.⁵ Boston began experiencing an alarming trend of youth-on-youth violence in late 2005.⁶ The Boston Globe reported that 2006 was the

1. Matthew J. Machera, Op-Ed., *Strategies Against Violence*, BOSTON GLOBE, July 3, 2007, available at http://www.boston.com/news/globe/editorial_opinion/oped/articles/2007/07/03/strategies_against_violence/.

2. Marian Wright Edelman, *A Call to Action: The Cradle to Prison Pipeline Crisis*, 80 N.Y. ST. B.J. 32, 32 (2008) (explaining over 200 million guns saturate America’s communities and homes).

3. See POLICE EXECUTIVE RESEARCH FORUM, CRITICAL ISSUES IN POLICING SERIES: VIOLENT CRIME IN AMERICA: “A TALE OF TWO CITIES” iii (2007) http://www.policeforum.org/upload/VC%20Summit%2007_full_148192123_1272007111812.pdf (noting violent crime levels increased nationwide by mid-2000s); see also *id.* at 9, 11 (suggesting violence committed by juveniles main factor in increased violent crime). Among officials dedicated to reducing violent crime, the “consensus was that a gathering storm of violent crime . . . needed to be brought to the nation’s attention.” *Id.* at 2.

4. See *id.* at iii (citing ten-year high in Boston’s homicide rate).

5. Joan Vennoch, Op-Ed., *After More Youth Shootings, Where’s the Outrage?*, BOSTON GLOBE, Oct. 26, 2008, available at http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2008/10/26/after_more_youth_shootings_wheres_the_outrage/ (comparing twenty-three shooting victims under age seventeen in 2002 with sixty-seven in 2007).

6. See Sara Miller Llana, *Boston Battles Surge in Gun Violence*, CHRISTIAN SCI. MONITOR, Dec. 12,

“bloodiest” year in over a decade.⁷ This increase represents a setback from the early 1990s when Boston had success working with youth to decrease violence.⁸

Desperate to stop the youth-on-youth violence permeating the city, the Boston Police Department (BPD) unveiled the Safe Homes Initiative (Safe Homes) in November 2007—a program designed to reduce the number of weapons available to at-risk youth by confiscating firearms from juveniles without prosecuting them for illegal possession.⁹ Under Safe Homes, the police targeted four neighborhoods in which they planned to seek consent from parents to search homes for illegal weapons.¹⁰ Safe Homes is a community-policing based initiative that requires both participation and cooperation from members of the local communities.¹¹ However, the program was met with strong opposition from the communities it targets.¹² The American Civil

2005, <http://www.esmonitor.com/2005/1212/p03s02-ussc.htm> (noting shootings up 33% from 2004).

7. Mac Daniel & Michael Levenson, *Boy, 14, Shot Dead as New Year Begins*, BOSTON GLOBE, Jan. 2, 2007, available at

http://www.boston.com/news/local/articles/2007/01/02/boy_14_shot_dead_as_new_year_begins/ (citing seventy-four murders); see also *supra* text accompanying note 1 (citing examples of youth violence in Boston).

8. See SHAY BILCHIK, U.S. DEP’T OF JUSTICE, PROMISING STRATEGIES TO REDUCE GUN VIOLENCE 26 (1999), available at http://www.ojjdp.ncjrs.org/pubs/gun_violence/173950.pdf. In the mid-1990s, Boston implemented numerous strategies focusing on intervention and prevention to deter youth from gun violence; by 1998, Boston saw a significant decrease in youth homicides. *Id.* at 28, 32. Researchers attributed the success to the “cumulative impact of [the] comprehensive multipronged approach.” *Id.* at 33; see also Llana, *supra* note 6 (reporting success of 1990s led to complacency and program budget cuts); Joan Vennochi, Op-Ed., *Terrorism in Boston*, BOSTON GLOBE, July 2, 2006, available at http://www.boston.com/news/globe/editorial_opinion/oped/articles/2006/07/02/terrorism_in_boston/ (noting loss of money and programs leads to increase in outrage and violence).

9. See Maria Cramer, *Police to Search for Guns in Homes: City Program Depends on Parental Consent*, BOSTON GLOBE, Nov. 17, 2007, available at http://www.boston.com/news/local/articles/2007/11/17/police_to_search_for_guns_in_homes/ (explaining BPD’s new program). As Boston Police Commissioner Edward Davis put it, “I can’t keep showing up at crime scenes and seeing the carnage wrought by these firearms without trying everything in my purview to stop it.” Globe Staff, *Civil Liberties Activists Criticize Boston Police Search Program*, BOSTON GLOBE, Nov. 20, 2007, available at http://www.boston.com/news/local/breaking_news/2007/11/civil_liberties_2.html (offering perspective of Boston Police Commissioner). Police are seeking to get guns off the street, not to prosecute. See BOSTON POLICE DEPARTMENT, SAFE HOMES INITIATIVE BROCHURE (on file with author) [hereinafter SAFE HOMES BROCHURE] (describing consequences of police finding firearms). If police found weapons, no one would be prosecuted; police planned to simply confiscate the weapons and leave. See *id.* The Suffolk County District Attorney, Daniel F. Conley, agreed to support Safe Homes and guaranteed no prosecutions. Cramer, *supra*.

10. See SAFE HOMES BROCHURE, *supra* note 9 (detailing how Safe Homes works); see also *infra* note 33 (listing neighborhoods). The city targeted four neighborhoods identified as high-crime areas. Mass. Lawyers Weekly Staff, *Commentary: ‘Safe Homes’ at What Price?*, MASS. L. WKLY., Nov. 26, 2007.

11. See SAFE HOMES BROCHURE, *supra* note 9 (describing commitment to community); U.S. DEPARTMENT OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, COMMUNITY POLICING DEFINED, <http://www.cops.usdoj.gov/default.asp?Item=36> [hereinafter COMMUNITY POLICING DEFINED] (defining community policing). Community policing uses partnerships between law enforcement and the communities they serve “to develop solutions to problems and increase trust in police.” COMMUNITY POLICING DEFINED, *supra*.

12. See Saeed Shabazz, *Boston Police Launch Controversial Gun Search Program*, FINALCALL, Jan. 28, 2008, http://www.finalcall.com/artman/publish/article_4341.shtml (criticizing program as circumventing civil liberties).

Liberties Union (ACLU) has been especially vocal about its concerns, citing constitutional issues as well as its apprehension about the negative consequences that are likely to result from this program.¹³

This Note analyzes whether Safe Homes, as it was originally proposed by the BPD, is compatible with the Fourth Amendment's guarantee to be free from unreasonable searches and seizures. Part II.A details Safe Homes, the program it was modeled after, and similar programs initiated in other cities.¹⁴ Part II.B provides an overview of the Fourth Amendment principles applicable to Safe Homes.¹⁵ Part III analyzes Safe Homes to determine whether it comports with constitutional standards and whether the constitutional standards adequately protect residents targeted by Safe Homes.¹⁶ Next, this Note explores both the negative and positive consequences likely to result from Safe Home and argues that the initiative will not work without the support of the Boston community.¹⁷ Further, even with community support, there are changes that could be made to ensure Safe Homes is conducted properly.¹⁸

II. HISTORY

A. An Overview of the Programs

1. St. Louis's Firearm Suppression Program

In the late 1980s and early 1990s, St. Louis, Missouri experienced a significant increase in gun-related homicides, a majority of which involved young African-American males as the offender, the victim, or both.¹⁹ In response to growing concerns over violence, the St. Louis Police Department (SLPD) implemented the Firearm Suppression Program (FSP) in 1994—an initiative aimed at reducing youth-related gun violence by confiscating guns from juveniles.²⁰ The FSP was innovative because of the SLPD's willingness

13. American Civil Liberties Union, *ACLU of Massachusetts Warns Boston Residents About Warrantless Searches of Their Homes*, Nov. 20, 2007, <http://www.aclu.org/racialjustice/gen/33247prs20071120.html> (describing launch of neighborhood outreach to educate citizens on constitutional rights).

14. See *infra* Part II.A (discussing various programs).

15. See *infra* Part II.B (reviewing Fourth Amendment jurisprudence).

16. See *infra* Part III.A (applying constitutional principles to Safe Homes program).

17. See *infra* Part III.B (examining various aspects of Safe Homes); Part III.B.4. (discussing how Safe Homes might work).

18. See *infra* Part IV. (proposing changes and additions to program).

19. See BILCHIK, *supra* note 8, at 88 (finding increase in juvenile homicide suspects during 1990s); see also Richard Rosenfeld & Scott H. Decker, *Consent to Search and Seize: Evaluating an Innovative Youth Firearm Suppression Program*, 59 LAW & CONTEMP. PROBS. 197, 198-200 (1996) (finding percentage of juvenile offenders tripled and noting gun-related homicides concentrated among African-Americans).

20. See SCOTT H. DECKER & RICHARD ROSENFELD, U.S. DEPARTMENT OF JUSTICE, REDUCING GUN VIOLENCE: THE ST. LOUIS CONSENT-TO-SEARCH PROGRAM 1 (2004), available at <http://www.ojp.usdoj.gov/nij/pubs-sum/191332.htm> [hereinafter REDUCING GUN VIOLENCE] (detailing FSP origins). The concept for the FSP came about at a community meeting of residents and police, when a resident voiced concerns about homes

to forgo arrest in return for the chance to take away a gun from an at-risk youth.²¹ Under the FSP, the SLPD, usually acting on community referrals, would knock on doors of juveniles' homes and request permission from their parents to search for guns.²² The SLPD provided parents with consent-to-search forms stating the purpose of the program and acknowledging that if guns were found neither the child nor any other member of the house would be prosecuted.²³

The FSP was extremely successful during its first few years.²⁴ In 1994, the SLPD conducted between five and thirty searches each night, and guns were found and confiscated in half of the homes searched.²⁵ The SLPD believed that the program's ultimate success depended on the promise not to prosecute juveniles found in possession of illegal firearms.²⁶ However, the most important factor leading to the FSP's success was the support and cooperation of the St. Louis community.²⁷

The FSP was not without its critics.²⁸ The ACLU questioned whether consent to search would ever really be voluntary in the circumstances.²⁹ However, because the FSP received almost no criticism from the St. Louis community, the ACLU's concerns were largely ignored and opponents did not

where teens were known to have guns. *Id.* Police acknowledged that there was little they could do because of insufficient information needed to obtain a search warrant. *Id.* In response, the resident asked, "Why don't you just knock on the door and ask that mother if you can search the house?" *Id.* This simple question led to the creation of FSP. *See id.* at 3. (stating FSP based on community policing method); *see also* BILCHIK, *supra* note 8, at 88 (explaining FSP encouraged community involvement in addressing gun violence).

21. *See* REDUCING GUN VIOLENCE, *supra* note 20, at 3 (describing innovative nature of FSP). This tradeoff was fundamental to the success of the FSP. *Id.*

22. *See* Rosenfeld & Decker, *supra* note 19, at 197, 204 (explaining how FSP operated). Information that a juvenile may have a gun came mostly from members of the community. *See* REDUCING GUN VIOLENCE, *supra* note 20, at 8.

23. *See* Rosenfeld & Decker, *supra* note 19, at 204 (explaining residents who signed "Consent to Search and Seize" form assured no prosecution).

24. *See* REDUCING GUN VIOLENCE, *supra* note 20, at 1 (describing success of FSP).

25. *Id.* at 8-9 (describing success of program in 1994). During the first year the SLPD confiscated 402 guns from the homes of juveniles. *Id.* at 1. On average three guns were found in each home where guns were seized. *Id.* at 8-9.

26. *See* REDUCING GUN VIOLENCE, *supra* note 20, at 3 (explaining promise not to prosecute fostered trust in community).

27. *See* BILCHIK, *supra* note 8, at 89 (indicating favorable response from community). The SLPD reported that ninety-eight percent of those asked to sign a consent form did so. REDUCING GUN VIOLENCE, *supra* note 20, at 12. One parent even offered to sign pre-dated forms so that police could return to her home at any time, and another mother wanted to give police a key to her house so they could search while she was at work. *See* Rosenfeld & Decker, *supra* note 19, at 204; *see also supra* note 22 (stating FSP based on community referrals). The FSP was less successful when referrals did not come from community members. *See* SCOTT H. DECKER & RICHARD ROSENFELD, FROM PROBLEM SOLVING TO CRIME SUPPRESSION TO COMMUNITY MOBILIZATION: AN EVALUATION OF THE ST. LOUIS CONSENT-TO-SEARCH PROGRAM, NAT'L CRIM. JUSTICE REFERENCE SERVICE 24-25 (2001), available at www.ncjrs.gov/pdffiles1/nij/grants/188291.pdf [hereinafter EVALUATION] (illustrating reduced cooperation resulting from police-driven target selection).

28. *See* Rosenfeld & Decker, *supra* note 19, at 204-05 (noting criticism of FSP).

29. *See id.* at 204 (questioning validity of consent); *see also infra* note 44 (indicating same objections from ACLU to Boston's Safe Homes Initiative).

pursue any legal action to end the program.³⁰ Two years after the FSP began, the chief of police who established the program stepped down, leading to substantial changes and the eventual termination of the program in 1999.³¹

2. The Safe Homes Initiative in Boston

Boston modeled Safe Homes after the St. Louis FSP and planned to operate the initiative in the same manner.³² Safe Homes was to be introduced into the four Boston neighborhoods with the highest reported levels of gun violence.³³ Under Safe Homes, a team of officers in civilian clothes and a community representative would knock on the doors of homes identified through tips and community referrals.³⁴

Like the SLPD, the BPD would explain Safe Homes to the parent and then ask the parent to sign a consent-to-search form.³⁵ The BPD stated that parents would be informed of their right to stop the search at anytime and that searches could be restricted to certain areas.³⁶ Officers would explain that choosing not to participate or withdrawing consent would not result in any adverse consequences.³⁷ District Attorney Daniel Conley backed the initiative by agreeing not to prosecute juveniles for possession of an illegal firearm.³⁸ Further, if other illegal items were found they would be seized and in most cases, no prosecution would follow.³⁹ However, the BPD made clear that they

30. See Rosenfeld & Decker, *supra* note 19, at 197, 204 (noting FSP generated little objection from effected community); EVALUATION, *supra* note 27, at 8 (finding absence of legal actions filed contesting constitutionality of FSP interesting). However, Decker & Rosenfeld note that such a program is likely to be held constitutional under Supreme Court precedent. See EVALUATION, *supra* note 27, at 8.

31. REDUCING GUN VIOLENCE, *supra* note 19, at 2 (discussing circumstances leading to program termination).

32. See Anthony A. Braga & Jeffery L. Brown, Op-Ed., *Curbing Gun Violence Requires Trust*, BOSTON GLOBE, Nov. 25, 2007, at C9 (reporting Safe Homes based on “consent-to-search” program in St. Louis); see also SAFE HOMES BROCHURE, *supra* note 9. The Safe Homes brochure states that,

Safe Homes is designed to disarm youth . . . by seeking voluntary consent from their parents to allow police to search for illegal firearms. . . . [N]either the youth nor anyone else in the home will be charged with the illegal possession of a firearm in the home. This is not about taking kids into custody; it’s about keeping kids safe and taking guns out of their hands.

SAFE HOMES BROCHURE, *supra* note 9.

33. See *id.* (listing Franklin Hill & Franklin Field, Grove Hall, Bowdoin/Geneva, and Egleston Square as target neighborhoods).

34. See *id.* (explaining officers assigned to Boston Public Schools would conduct visits based on referrals). Referrals were to come from parents, community groups, schools, police officers, or individuals that called a police hotline. *Id.*

35. See *id.* (noting bi-lingual officers available to explain Safe Homes and ask for consent).

36. SAFE HOMES BROCHURE, *supra* note 9 (explaining consent could be limited to certain spaces, such as closet).

37. *Id.* (assuring no consequences if resident decides to end search).

38. See Cramer, *supra* note 9 (describing consequences if firearms found).

39. See SAFE HOMES BROCHURE, *supra* note 9 (detailing protocol when small quantities of drugs are found); see also Cramer, *supra* note 9 (reporting police discretion to arrest if drugs found). If small amounts of

would not provide blanket immunity in all cases, as this would be an invitation to use Safe Homes to absolve criminals from all kinds of charges.⁴⁰

The BPD expected Safe Homes to be as popular and successful as the FSP.⁴¹ To the dismay of the BPD, however, Safe Homes never took effect as envisioned.⁴² Safe Homes was supposed to start in December 2007, but it was delayed several times due to strong opposition from the communities.⁴³ The long history of mistrust between the African-American community and the BPD played a large role in the resistance.⁴⁴ Finally, in March 2008, the BPD launched a drastically scaled back version of Safe Homes.⁴⁵

Instead of launching the program into four neighborhoods as originally planned, the BPD announced that it would only target Egleston Square in Jamaica Plain.⁴⁶ Safe Homes would not send police door-to-door to request consent to search; instead, citizens must call and request a search because the

drugs such as marijuana are found, police will likely confiscate it and will not follow up with charges. Cramer, *supra* note 9. However, this immunity would not extend to a kilo of cocaine for example. *See id.* (noting officer discretion over issue of drugs).

40. *See* Jessica Van Sack, *Councilors, Cops at Odds Over Safe Homes Immunity*, BOSTON HERALD, June 4, 2008, at 4 (reporting BPD not expected to ignore evidence in front of them); *see also* SAFE HOMES BROCHURE, *supra* note 9 (explaining all recovered firearms traced by Bureau of Alcohol, Tobacco, Firearms and Explosives). If the police determine that someone used the firearm in a serious crime, police will launch an investigation to determine the culprit. *Id.*

41. *See* Braga & Brown, *supra* note 32 (citing success in St. Louis and noting Boston based Safe Homes on St. Louis' FSP).

42. *See* Maria Cramer, *Police Limit Searches for Guns: Opposition From Residents is Strong; Invited into Homes Without Warrants*, March 25, 2008, at A1, available at http://www.boston.com/news/local/articles/2007/11/17/police_to_search_for_guns_in_homes/ [hereinafter *Opposition From Residents*] (reporting police surprised by strong opposition); *see also* Maria Cramer, *Police, Activists Battle Over City Antigun Effort*, BOSTON GLOBE, Nov. 21, 2007, at B1, available at http://www.boston.com/news/local/articles/2007/11/21/police_activists_battle_over_city_antigun_effort/ [hereinafter *Police, Activists Battle*] (noting tension between BPD and ACLU seemed "odd" to Police Commissioner). Boston police Commissioner Davis was surprised that the ACLU would be so opposed to a program that is focused on making homes safer and not on prosecution. *Id.*

43. *See* *Opposition From Residents*, *supra* note 42 (citing community misgivings as reason for delays).

44. *See* Chris Lovett, *Home Searches for Guns Meet Resistance*, CIVIC BOSTON (Mar. 2, 2008, 15:52 EST), <http://civicboston.blogspot.com/2008/03/homes-searches-for-guns-meet-resistance.html> (noting long history of conflict citing Charles Stuart case); *see also* Braga & Brown, *supra* note 32 (opining success of Safe Homes depends on trust between community and police). Braga and Brown note the long and justified history of distrust and skepticism of police officers for using improper and overly aggressive tactics. Braga & Brown, *supra* note 32; *see also* AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS, WHAT IS WRONG WITH THE SAFE HOMES' INITIATIVE? 1 (2008), http://www.aclum.org/pdf/aclum_safe_homes_briefing_v2.pdf [hereinafter ACLUM] (stating fears associated with police at door inflamed by recent immigrant raids in Boston); Ronald E. Hampton, Op-Ed., *Civil Rights Sacrificed by Safe Homes*, BOSTON HERALD, June 3, 2008, at 19 (offering perspective of black police officer). Hampton unequivocally states that he would not let police search his home, claiming not enough has changed in America to make him trust police. Hampton, *supra* note 44.

45. *See generally* Maria Cramer, *Police Launch a Scaled-back Gun Search Program*, BOSTON GLOBE, Mar. 28, 2008, at B4, available at http://www.boston.com/news/local/articles/2008/03/28/police_launch_a_scaled_back_gun_search_program/ [hereinafter *Police Launch Scaled-Back Program*] (reporting Safe Homes launch).

46. *See* *Opposition from Residents*, *supra* note 42 (explaining most support for Safe Homes in Egleston Square).

program is strictly voluntary.⁴⁷ As of May 2008, only two residents utilized the voluntary Safe Homes program.⁴⁸

3. *Washington, D.C. and Oakland, California Attempt to Develop Similar Programs*

Boston was not the only city to try new tactics to curb the recent increases in youth violence.⁴⁹ Washington, D.C. and Oakland each attempted to initiate programs similar to Safe Homes during 2008.⁵⁰ However, much like Safe Homes, these programs have not been successful.⁵¹

Following Boston's lead, in March 2008, Washington, D.C.'s Metropolitan Police Department (MPD) launched the Safe Homes Safety Check Program (Safety Check).⁵² Originally, the MPD planned to initiate searches by having officers knock on doors in designated "Focused Improvement Area[s]."⁵³ Community concerns prompted the MPD to quickly change the protocol; instead of making the program available citywide, the MPD would only conduct searches upon request from residents after an appointment has been made.⁵⁴ The MPD decided to implement the program in phases; however, as of

47. *Hearing Regarding D.C. MPD's Home Search Program before the D.C. Council Judiciary Committee* (2008) (statement of Johnny Barnes, Executive Director, ACLU-NCA), available at <http://www.aclu-nca.org/pdf/PoliceSearchStatementAtDCcouncil.pdf> [hereinafter *Statement of Johnny Barnes*] (discussing evolution of Boston's program).

48. David Taber, *Safe Homes Gets 2 Guns*, JAMAICA PLAIN GAZETTE, May 30, 2008, <http://jamaicaplaingazette.com/node/2771> (reporting two instances in which residents called hotline). One parent called the hotline and agreed to let police search her home; the other caller was a youth worker who had been given a gun by a concerned mother who found the weapon after conducting her own search. *Id.*

49. See *infra* note 50 (citing programs initiated in other cities).

50. See Metropolitan Police Department, *The Safe Homes Safety Check Program*, <http://mpdc.dc.gov/mpdc/cwp/view,a,1242,q,564679.asp> (outlining Washington D.C. Safe Homes program); CITY OF OAKLAND, POLICE DEPARTMENT, *A REPORT AND RECOMMENDATION FROM THE OFFICE OF CHIEF OF POLICE ON THE DEVELOPMENT OF A CONSENT-TO-SEARCH PROGRAM FOR THE CITY OF OAKLAND* (Apr. 8, 2008), available at <http://clerkwebsvr1.oaklandnet.com/attachments/18877.pdf> [hereinafter *CHIEF OF POLICE REPORT AND RECOMMENDATION*] (recommending six-month consent-to-search pilot program).

51. See *infra* notes 55-60 and accompanying text (detailing lack of success in Washington, D.C. and Oakland, CA).

52. See David C. Lipscomb, *Lanier Blames Self in Initiative; Bears Backlash in Search Plan*, WASH. TIMES, Apr. 3, 2008, at A01 (noting MPD program modeled after similar Boston program); *Police Launch Gun Program*, WASH. TIMES, Mar. 25, 2008, <http://www.washingtontimes.com/news/2008/mar/25/police-launch-gun-program> (reporting initiation of MPD program). Metropolitan Police Department, *The Safe Homes Safety Check Program*, <http://mpdc.dc.gov/mpdc/cwp/view,a,1242,q,564679.asp>. The MPD describes Safety Check as a way to remove firearms from homes without the threat of prosecution. *Id.*

53. See *The Metropolitan Police Department's Safe Homes Initiative: Hearing on Safe Homes Initiative Before Committee on Public Safety and the Judiciary* (Apr. 7, 2008) (statement of Cathy L. Lanier, Chief of Police) [hereinafter *Hearings*]. The MPD originally planned to knock on doors in the Seventh Police District and ask whether the occupant would agree to a search, and sign a consent form. *Id.*; see also METROPOLITAN POLICE DEPARTMENT, *THE SAFE HOMES SAFETY CHECK PROGRAM BROCHURE*, http://mpdc.dc.gov/mpdc/serv/programs/pdf/SafeHomes_919CRIME_brochure.pdf (Mar. 2008) (providing information regarding program participation).

54. See *Hearings*, *supra* note 53 (clarifying misconceptions about Safe Homes). To address concerns that certain neighborhoods were being targeted unjustly, Safety Check was made available to all communities. *Id.*; see also METROPOLITAN POLICE DEPARTMENT, *THE SAFE HOMES SAFETY CHECK PROGRAM BROCHURE*, http://mpdc.dc.gov/mpdc/serv/programs/pdf/SafeHomesBrochures_050808.pdf (May 2008) (updating

June 2008, the MPD had still not implemented Safety Check because of community opposition similar to that faced in Boston.⁵⁵

In February 2008, Oakland City Council Members asked the Oakland Police Department (OPD) to develop a consent-to-search plan to confiscate illegal guns from juveniles in the city.⁵⁶ The OPD offered a plan similar to Boston's original Safe Homes program; however, the Oakland City Council rejected the plan.⁵⁷ Council Members were unhappy with the plan to have police officers knock on doors without a search warrant.⁵⁸ In April 2008, the City Council approved a six-month pilot of a redrafted plan, however the program was delayed due to disagreements about the city's method of advertisement.⁵⁹ Subsequently, the City Council withdrew voting on the program and decided not to schedule another date.⁶⁰

B. Search and Seizure

The Fourth Amendment to the United States Constitution provides that, “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause.”⁶¹ The “touchstone of the Fourth Amendment is reasonableness.”⁶² The right to be free from

information to reflect change in protocol). While beyond the scope of this Note, critics argue that citizens are being treated unequally when police implement such programs in certain communities and not others. See Kenneth Brooks, *Proposals for Consent-to-Search Homes are Unethical*, ETHICALEGO OP., Apr. 20, 2008, http://www.ethicalego.com/consent_to_search.htm (noting lack of gun safety program in suburban schools despite horrible youth violence); see also *Hearings*, *supra* note 53, at 3 (suggesting program's scope broadened as a result of criticism regarding unfair treatment among neighborhoods).

55. See *Hearings*, *supra* note 53, at 3-4 (discussing implementation of Safety Check). Lanier stated that Safety Check would be introduced in phases to ensure that the community was comfortable with the program. *Id.* Failure to provide adequate information to community members fueled the opposition and led to delay in implementation. See Lipscomb, *supra* note 52 (noting lack of transparency in program announcement); Allison Klein, *D.C. Police to Check Drivers in Violence-Plagued Trinidad*, WASH. POST, June 5, 2008, at A01 (reporting Lanier backed off due to criticism but plans to move forward soon).

56. See Kelly Rayburn, *Council Asks Police to Draft Gun-Search Plan*, OAKLAND TRIB., Feb. 22, 2008, available at 2008 WLNR 3510951 (requesting police develop plan as part of city's anti-crime efforts).

57. See Kelly Rayburn, *Oakland Council Pulls Gun-Search Program From Agenda*, OAKLAND TRIB., Apr. 16, 2008, available at 2008 WLNR 7071372 (explaining council's rejection of plan because “ripe for abuse” without added safeguards).

58. See *id.* (describing Council's vision for amnesty program where parents request help).

59. See CHIEF OF POLICE REPORT AND RECOMMENDATION, *supra* note 50 (describing new plan for pilot program); Kelly Rayburn, *Council Approves Caldecott Tunnel Deal*, OAKLAND TRIB., June 20, 2008, available at 2008 WLNR 11673326 (reporting council held off from voting again). Council Members were uneasy about the wording on a draft advertisement that stated, “How are families selected for participation?” Rayburn, *supra*. Council Members were concerned that this language could suggest that the program was not voluntary. *Id.*

60. See The Oakland City Council, Rules and Legislation Committee, Meeting Minutes, 10, June 26, 2008, available at http://clerkwebsvr1.oaklandnet.com/meetings/2008/6/5483_M_Rules_Legislature_Comitee_08-06-26_Meeting_Minutes.pdf (withdrawing action on consent to search program).

61. U.S. CONST. amend. IV.

62. *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). The Court recognized that the Fourth Amendment only

unreasonable government intrusions into one's home is at the heart of the Fourth Amendment.⁶³

1. Consent Exception to the Warrant Requirement

Searches conducted inside a home without a warrant are presumptively unreasonable.⁶⁴ However, the Supreme Court has established exceptions where a warrant is not required to conduct a lawful search and seizure.⁶⁵ Consent to search is a well-established exception to the warrant requirement.⁶⁶ For consent to be constitutional, it must be given freely and voluntarily.⁶⁷ In *Schneckloth v. Bustamonte*,⁶⁸ the Supreme Court established a totality of the circumstances test to determine whether consent was in fact voluntary.⁶⁹

In determining whether consent is voluntary, courts look at various factors, including the citizens' level of education and intelligence, ability to speak English, emotional state at the time of consent, knowledge of their constitutional rights, and the behavior of law enforcement.⁷⁰ The use of

prohibits unreasonable state-initiated searches and seizures. *Id.*

63. *Silverman v. United States*, 365 U.S. 505, 511-12 (1961) (emphasizing sanctity of home). “[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” *United States v. U.S. Dist. Court (Keith)*, 407 U.S. 297, 313 (1972).

64. *See Coolidge v. New Hampshire*, 403 U.S. 443, 474-75 (1971) (recognizing distinction between searches on person's property and those conducted elsewhere); *see also Katz v. United States*, 389 U.S. 347, 357 (1967) (citing numerous cases holding searches and seizures without warrants unlawful even where probable cause existed).

65. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)) (noting “narrow and well-delineated” exceptions).

66. *See id.* at 219 (stating search conducted with consent well-settled exception). “In situations where the police have some evidence of illicit activity, but lack probable cause to arrest or search, a search authorized by a valid consent may be the only means of obtaining important and reliable evidence.” *Id.* at 227.

67. *See id.* at 222 (noting burden on prosecution to prove consent voluntarily given).

68. 412 U.S. 218 (1973)

69. *See id.* at 227 (establishing totality of circumstances test for determining whether consent voluntary). The test of voluntariness is whether the defendant's will has been “overborne” or his “capacity for self-determination critically impaired.” *Id.* at 225.

70. *See id.* at 226 (listing factors to consider, but noting none themselves controlling). *See generally* WAYNE R. LAFAYE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 8.2 (4th ed. 2008) (considering appropriate inquiry into individual's mental or emotional state at time of consent). Language barriers are an important factor used to determine whether consent is voluntary. *See United States v. Rodriguez*, 525 F.2d 1313, 1316 (10th Cir. 1975) (holding compliance by person who spoke little English not voluntary consent). *But see Guevara v. State*, 97 S.W.3d 579, 582-83 (Tex. Crim. App. 2003) (rejecting claim of invalid consent where consent form in defendant's native language). Although the defendant in *Guevara* only had a fourth-grade education and a limited understanding of English, the court held that he gave valid consent to search his apartment because he indicated that he understood and signed the Spanish consent form provided to him. *See id.* at 583 (holding consent valid). Emotional distress must be so overwhelming that it impairs one's ability to make decisions. *United States v. Duran*, 957 F.2d 499, 503 (7th Cir. 1992). In *United States v. Marin*, the court acknowledged that the defendant may have been upset by the presence of DEA agents, finding out about her husband's arrest, and the request to search her home; however, the court determined that, absent coercion, the voluntariness of her consent was not defeated by the fact that she may have been upset. 761 F.2d 426, 434 (7th Cir. 1985).

coercive tactics by law enforcement may effect the validity of any consent.⁷¹ The Supreme Court expressly rejected the argument that a person must be aware of their Fourth Amendment rights to provide valid consent.⁷² The Supreme Court's Fourth Amendment jurisprudence has been criticized as encouraging citizen ignorance about their constitutional rights.⁷³ In fact, in *Schneckloth*, the Court expressly encouraged consent searches; it noted that communities have an interest in aiding the fight against crime.⁷⁴

The *Schneckloth* Court put forth a subjective test, but recently there has been a trend toward focusing on the objective reasonableness of the police officer's behavior in deciding whether consent was voluntary.⁷⁵ In *Ohio v. Robinette*,⁷⁶ the Court reiterated that the "touchstone of the Fourth Amendment is reasonableness," which is measured by objective terms.⁷⁷ Although *Schneckloth* has not been overruled, lower courts rarely consider subjective factors when analyzing consent cases, leading scholars to claim that "the subjectivity requirement of *Schneckloth* is dead."⁷⁸ In Massachusetts, consent must be "unfettered by coercion express or implied, and [must be] something

71. See LAFAVE, *supra* note 70, § 8.2 (e) (stating courts take into account whether circumstances surrounding consent coercive). It is unlikely that consent will be held invalid due to a single coercive factor; however, consent will be invalid where several coercive factors are present. *Id.* Although a large number of police officers is not per se coercive, it may be depending on the circumstances. See *People v. Reed*, 224 N.W.2d 867, 878 (Mich. 1975) (holding voluntary consent given despite total of nine law enforcement officers present). The element of coercion has been found where police attempt to obtain consent at unnatural hours. See *Harless v. Turner*, 456 F.2d 1337, 1339 (10th Cir. 1972) (holding consent invalid where officers entered home at 1:45 am). Certain police behavior can be intimidating and possibly coercive. See *United States v. Drayton*, 536 U.S. 194, 203-04 (2002). In deciding police's request to search was not coercive, the Court noted there was no show of force, no threat or authoritative tone, and no display of weapons. *Id.* But cf. *United States v. Pelton*, 835 F. 2d 1067, 1071 (4th Cir. 1987) (noting total absence of intimidation not necessary for voluntariness, otherwise no statement would be voluntary).

72. See *Schneckloth v. Bustamonte*, 412 U.S. 218, 232-33 (1973) (rejecting proof of knowledge prerequisite for valid consent); see also Christo Lassiter, *Consent to Search by Ignorant People*, 39 TEX. TECH. L. REV. 1171, 1175 (2007) (recognizing voluntariness as lesser constitutional standard than waiver).

73. See generally Morgan Cloud, *Ignorance and Democracy*, 39 TEX. TECH. L. REV. 1143 (arguing Fourth Amendment doctrine accepts and encourages ignorance).

74. *Schneckloth*, 412 U.S. at 242-43 (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 448 (1971)) (stating policy of Fourth Amendment not meant to discourage aiding police through consent).

75. See Marcy Strauss, *Reconstructing Consent*, 92 J. CRIM. L. & CRIMINOLOGY 211, 232-33 (2002) (noting subjective standard established in *Schneckloth*); see also *supra* note 68 (discussing establishment of totality of circumstances test). Strauss reviewed numerous post-*Schneckloth* consent cases and found that, rather than focusing on the citizen's subjective perspective, courts "emphasized what a reasonable person would believe, or whether the police acted reasonably under the circumstances." *Id.* at 229. Strauss concluded that in the rare cases in which courts determined consent was involuntary, they relied on affirmative police misconduct. *Id.* at 225; see also Ric Simmons, *Not "Voluntary" but Still Reasonable: A New Paradigm for Understanding the Consent Searches Doctrine*, 80 IND. L.J. 773, 810 (2005) (explaining "reasonableness" demands objective inquiry focused on actions of police).

76. 519 U.S. 33 (1996).

77. *Id.* at 39 (quoting *Florida v. Jimeno*, 500 U.S. 248, 250 (1991)).

78. See Simmons, *supra* note 75, at 779. Simmons comments that recent cases at all levels have considered objective factors only. See *id.*; see also Tracey Maclin, *The Good and Bad News About Consent Searches in the Supreme Court*, 39 MCGEORGE L. REV. 27, 29 (2008) (noting some courts judge reasonableness of police conduct without considering subjective factors required by *Schneckloth*).

more than mere acquiescence” with authority.⁷⁹ In recent cases analyzing whether consent was voluntary, courts in Massachusetts have taken into account subjective factors.⁸⁰

2. Seizure

Not all encounters between police and citizens amount to a seizure.⁸¹ A person has been “seized” only if, given the circumstances, “a reasonable person would have believed that he was not free to leave.”⁸² When police approach a citizen in a situation where it is illogical to inquire whether a reasonable person would feel free to leave, such as when police approach a citizen in a confined space, the appropriate analysis is “whether a reasonable person would feel free to decline the officers’ request or otherwise terminate the encounter.”⁸³

The prevailing rule is that no seizure takes place when an officer approaches a home and seeks to speak with the resident, unless, under all the circumstances a reasonable person would not have believed they were free to ignore the police.⁸⁴ The Supreme Court has reiterated that the test is an objective one.⁸⁵ For example, in *Hayes v. State*,⁸⁶ the court held that no illegal seizure occurred where officers knocked on the door without weapons drawn and merely asked—as opposed to commanded—the defendant to let them come inside to discuss complaints of drug activity.⁸⁷ However, if an illegal seizure does occur,

79. *Commonwealth v. Walker*, 350 N.E.2d 678, 685 (Mass. 1976) (defining free and voluntary consent under the Massachusetts Constitution).

80. *See, e.g., Commonwealth v. Burgess*, 749 N.E. 2d 112, 116 (Mass. 2001) (taking into account age and level of intelligence); *Commonwealth v. Yehudi Y.*, 780 N.E.2d 150, 155 (Mass. App. Ct. 2002) (stating personal characteristics of person giving consent relevant in determining whether consent voluntary); *Commonwealth v. Reyes*, No. 06-01827, 2007 Mass. Super. LEXIS 391, at *4 (Mass. Super. Ct. Aug. 21, 2007) (noting fact citizen not English speaker irrelevant if accurate translation).

81. *Terry v. Ohio*, 392 U.S. 1, 20 n.16 (1968) (explaining police must restrain liberty of citizen in some way).

82. *United States v. Mendenhall*, 446 U.S. 544, 555 (1980) (defining seizure under Fourth Amendment).

83. *See Florida v. Bostick*, 501 U.S. 429, 436 (1991) (discussing seizure in the context of police approaching person in dwelling place).

84. *See Davis v. United States*, 327 F.2d 301, 303 (9th Cir. 1964) (discussing lawfulness of police knocking on doors to gain invited entry).

Absent express orders from the person in possession against any possible trespass, there is no rule of private or public conduct which makes it illegal per se, or a condemned invasion of the person’s right of privacy, for anyone openly and peaceably, at high noon, to walk up the steps and knock on the front door of any man’s ‘castle’ with the honest intent of asking questions of the occupant thereof - whether the questioner be a pollster, a salesman, or an officer of the law.

Id.; *see also People v. Rivera*, 159 P.3d 60, 63 (Cal. 2007) (stating voluntary response to knock on door does not implicate Fourth Amendment). “The sanctity of the home is not threatened when police approach a residence, converse with the homeowner, and properly obtain consent to search.” *Id.* at 64.

85. *United States v. Drayton*, 536 U.S. 194, 202 (2002) (using objective test in determining whether seizure of person occurred on bus).

86. 794 N.E.2d 492 (Ind. Ct. App. 2003)

87. *Id.* at 498 (stating facts and determining no seizure occurred). The court’s focus was primarily on

subsequent consent to search—even if voluntary—will be rendered ineffective as tainted by the initial illegal seizure.⁸⁸

3. “Knock and Talk”

a. Legitimate Investigative Technique

Many of the Court’s search and seizure concepts apply to a specific law enforcement technique called “knock and talk.”⁸⁹ The term “knock and talk” refers to an investigative procedure used by law enforcement whereby police officers knock on the door of a home, request to speak with the owner or occupant, and then ultimately seek consent to search.⁹⁰ This tactic is most commonly used when police receive information that a person possesses illegal contraband, but the police do not have enough information to obtain a search warrant.⁹¹ Police officers do not have to corroborate tips before approaching the home identified in a tip.⁹² Police report that “knock and talks” result in a surprising number of consents.⁹³

Although the Supreme Court has never directly decided a “knock and talk” case, most federal and state courts have held that the procedure is not per se unconstitutional.⁹⁴ Courts conclude that, when done properly, a “knock and talk” is either constitutional or that it does not implicate the Fourth Amendment

police conduct. *Id.*

88. *Florida v. Royer*, 460 U.S. 491, 507-08 (1983) (plurality opinion) (holding consent given after defendant illegally detained ineffective to justify search). In *Royer*, the police stopped a man suspected of carrying drugs and detained him in an isolated room with two detectives for approximately fifteen minutes. *Id.* at 493-95. While in the room the officers asked the defendant if he would consent to a search of his luggage; without answering, the defendant took out a key and opened one of his bags for the police to inspect. *Id.* at 494. In finding the encounter to be an illegal seizure, the court noted that the length of detention was unreasonable because the police could have arranged to have a trained narcotics dog on the scene before hand, which would have vitiated the need to detain the defendant at all. *Id.* at 505-06. The Court suggested, “[i]ndeed, it may be that no detention at all would have been necessary. A negative result would have freed Royer in short order; a positive result would have resulted in his justifiable arrest on probable cause.” *Id.* The manner of questioning is a factor in determining whether a seizure occurred. See Strauss, *supra* note 75, at 264 (noting length and nature of questioning can become too long or intrusive, turning into seizure).

89. See *infra* note 96 and accompanying text (discussing “knock and talks” and searches and seizures).

90. See H. Morley Swingle & Kevin M. Zoellner, “Knock and Talk” Consent Searches: *If Called By a Panther, Don’t Answer*, 55 J. OF THE MO. B. 25, 25 (1999) (describing “knock and talk” procedure).

91. See *State v. Smith*, 488 S.E.2d 210, 212 (N.C. 1997) (articulating frequent scenario where “knock and talk” utilized); see also Swingle & Zoellner, *supra* note 90, at 25 (explaining common situation where police receive anonymous tips but cannot corroborate to establish probable cause).

92. See *People v. Rivera*, 159 P.3d 60, 62 (Cal. 2007) (denying Fourth Amendment mandates police corroborate anonymous tips before requesting consent to search home).

93. See *State v. Ferrier*, 960 P.2d 927, 933 (Wash. 1998) (noting officer testified virtually everyone confronted by “knock and talk” gives permission for search); see also *supra* note 27 (discussing ninety-eight percent consent rate in St. Louis).

94. See *United States v. Chambers*, 395 F.3d 563, 568, n.2 (6th Cir. 2005) (noting courts generally uphold “knock and talk” as legitimate tactic to obtain consent to search); *Scott v. State*, 782 A.2d 862, 868 (Md. 2001) (recognizing validity and noting general consensus among federal courts to uphold procedure).

at all.⁹⁵ As long as the initial encounter between the police and the citizen does not amount to a “seizure” and the subsequent consent to search is voluntarily given, the “knock and talk” procedure will be upheld.⁹⁶

b. Criticism of “Knock and Talks”

Despite the consensus that “knock and talks” are constitutional, criticism about the use of the procedure remains.⁹⁷ The fact that officers can legally search a home without a corroborated tip, probable cause or a search warrant seems to contradict Fourth Amendment jurisprudence.⁹⁸ Some argue that the “knock and talk” procedure is inherently coercive, and point to the surprising number of consents obtained through use of “knock and talks” as evidence.⁹⁹ While some believe that requesting consent to search is harmless because a citizen can simply refuse, in reality, most citizens are too afraid to refuse to consent when faced with a police officer at their doorstep.¹⁰⁰ The “knock and talk” analysis does not take into account the inherent psychological pressures on individuals to comply with police requests.¹⁰¹

A citizen who argues that he did not feel free to ignore the police at his

95. *United States v. Reeves*, 524 F.3d 1161, 1166 n.3 (10th Cir. 2008) (stating “knock and talks” fall into category of consensual encounters failing to implicate Fourth Amendment); *see also infra* note 96 (giving example of “knock and talk” constitutionality analysis).

96. *See People v. Frohriep*, 637 N.W.2d 562, 568 (Mich. Ct. App. 2001) (setting forth “knock and talk” procedure used by police and concluding no seizure occurred). In *Frohriep*, two police officers approached the defendant while he was in his yard, advised the defendant that they had information that he may have narcotics on his property, and requested consent to search. *Id.* In holding that this encounter did not constitute a seizure, the court noted that there was no indication that the defendant was not free to end the encounter or that the defendant ever felt threatened or coerced. *Id.* The court also held that the defendant’s consent to search was voluntary. *Id.* at 569; *see also Scott v. Maryland*, 782 A.2d 862, 867 (Md. 2001) (stating “knock and talk” analysis “begins with the knock on the door”). The court noted that to the extent a “knock and talk” is invalidated, it will be based on a finding that consent was not voluntarily procured, rather than that an unconstitutional seizure occurred. *Id.* at 873.

97. *See Swingle & Zoellner, supra* note 90, at 25-26 (stating “knock and talk” cases raise red flags).

98. *See Herbert Gaylord*, Case Note, *What Good is the Fourth Amendment?: “Knock and Talk” & People v. Frohriep*, 19 T.M. COOLEY L. REV. 229, 229-30 (2002) (arguing police circumvent Fourth Amendment safeguards when implementing “knock and talks”).

99. *See State v. Ferrier*, 960 P.2d 927, 933 (Wash. 1998) (emphasizing belief that all “knock and talks” are inherently coercive); *see also supra* note 93 and accompanying text (discussing “knock and talk” effectiveness in obtaining consent).

100. *Compare People v. Rivera* 159 P.3d 60, 64 (Cal. 2007) (asserting consent may easily be withheld), *with Schneckloth v. Bustamonte*, 412 U.S. 218, 275-76 (1973) (Douglas, J., dissenting) (quoting *Bustamonte v. Schneckloth*, 448 F.2d 699, 701 (9th Cir. 1971)) (stating reasonable person may interpret “May I” as “courteous . . . demand backed by force of law”), *and Ferrier*, 960 P.2d at 933 (pointing out most people simply too stunned to make reasoned decision about whether to consent).

101. *See Russell L. Weaver*, *The Myth of Consent*, 39 TEX. TECH. L. REV. 1195, 1199 (2007) (discussing officers’ psychological advantage over citizens); Janice Nadler, *No Need to Should: Bus Sweeps and the Psychology of Coercion*, 2002 SUP. CT. REV. 153, 173-75 (2002) (suggesting persons with authority, such as police, exert great influence over peoples’ decisions); Adrian J. Barrio, Note, *Rethinking Schneckloth v. Bustamonte: Incorporating Obedience Theory into the Supreme Court’s Conception of Voluntary Consent*, 1997 ILL. L. REV. 215, 222 (1997) (contending most people uncomfortable refusing police request, even if friendly).

doorstep or that police used coercion to obtain his consent need to prove what was said during the encounter.¹⁰² The voluntariness of consent can come down to a swearing match between officers and citizens.¹⁰³ In order to remedy this problem, scholars suggest that “knock and talks” should be tape-recorded.¹⁰⁴

c. “Knock and Talks” and Vulnerable Minorities

The “knock and talk” analysis does not take into account race, socioeconomic status, or police-community relations.¹⁰⁵ Critics argue these factors are relevant and should be taken into consideration when determining whether free choice exists in an encounter with police because inner-city African-Americans have a different experience during police encounters than white people.¹⁰⁶ The historically tense relationship between law enforcement and many African-American communities runs deep, yet courts do not consider how a person’s background might affect whether he or she voluntarily consents.¹⁰⁷

One circuit court of appeals explicitly rejected an argument that the defendant’s attitude toward police—due to his background and upbringing—was relevant in determining whether he voluntarily consented to a search of his luggage.¹⁰⁸ The court noted although a person’s subjective characteristics may

102. See Marc L. Waite, Note, *Reining in “Knock and Talk” Investigations: Using Missouri v. Seibert to Curtail an End-Run Around the Fourth Amendment*, 41 VAL. U. L. REV. 1335, 1352-53 (2007) (noting citizens version of encounter often differs from police officer’s).

103. Compare *id.* at 1374 (suggesting courts tend to favor law enforcement’s version of facts), with Swingle & Zoellner, *supra* note 90, at 27 (suggesting government may lose swearing match if citizen alleges police failed to say “magic words”).

104. See Swingle & Zoellner, *supra* note 90, at 27 (asserting use of tape recorders eliminates swearing contests).

105. *Schneckloth*, 412 U.S. at 226-27 (listing factors to consider in determining voluntary consent, race not listed). See generally *United States v. Drayton*, 536 U.S. 194 (2002) (formulating reasonable person test and failing to mention race, socioeconomic status, or community climate).

106. See Joshua Fitch, Comment, *United States v. Drayton: Reasonableness & Objectivity—A Discussion of Race, Class, and the Fourth Amendment*, 38 NEW ENG. L. REV. 97, 121-22 (2003) (arguing problem with Court’s objective reasonable person test is failure to take race into consideration); Dwight L. Green, *Justice Scalia and Tonto, Judicial Pluralistic Ignorance, and the Myth of Colorless Individualism in Bostick v. Florida*, 67 TUL. L. REV. 1979, 2024-25 (1993) (suggesting any judicial review of encounter between police and men of color should reflect realities of race issues); see also Robert V. Ward, *Consenting to a Search and Seizure in Poor and Minority Neighborhoods: No Place for a “Reasonable Person”* 36 HOW. L.J. 239, 245 (1993) (noting minorities more apprehensive of police abuse because subject to more police abuse than non-minorities).

107. See Green, *supra* note 106, at 2038-39. Green argues that failure to consider the history of tension between African-Americans and police in determining whether a reasonable African-American person would feel free to refuse an officer’s request is a mistake. See *id.* Others echo this sentiment. See Ward, *supra* note 106, at 245 (arguing real-life experiences of minorities should not be excluded when considering totality of circumstances); Fitch, *supra* note 106, at 122 (noting police traditionally symbols of oppression and brutality for majority of black men). The African-American community in Boston has had bad experiences with the BPD making them extremely suspicious of law enforcement. See *supra* note 44 and accompanying text (discussing history of clashes between BPD and African-American community).

108. See *United States v. Zapata*, 997 F.2d 751, 759 (10th Cir. 1993) (rejecting relevance of defendant’s

be relevant, recent Supreme Court cases have cast doubt on the issue.¹⁰⁹ The court also stated that even assuming some subjective factors were relevant, “an intangible characteristic such as attitude toward authority is unverifiable and unquantifiable.”¹¹⁰

Coercion is hard to prove without clear evidence of police overreaching; this ignores the reality that an encounter between African-Americans and law enforcement is often of an inherently coercive nature.¹¹¹ Police are not required to advise citizens of their right to refuse consent.¹¹² Individuals not aware of their constitutional rights, which is often the case for people from underprivileged minority backgrounds, may assume the police have the right to search them.¹¹³ Furthermore, many African-Americans are taught that it is in their best interest to comply with an officer’s request, thus the argument that citizens can “‘just say no’ to a police request to search is a sorry, empty slogan.”¹¹⁴

4. Scope of Consent

In determining the scope of consent, courts use an objective test and look at how a reasonable person would have interpreted the interaction between police and citizen.¹¹⁵ The person granting consent can expressly or implicitly limit or qualify the time, duration, area, or intensity of the search and consent may be withdrawn or limited at any point before the search is complete.¹¹⁶ If given

attitude toward authority for voluntary consent). The defendant contended that his upbringing in Mexico led him to believe negative consequences would occur if he did not consent. *See id.* at 755.

109. *Id.* at 759 (analyzing voluntariness of Mr. Zapata’s consent).

110. *See id.* (recognizing factors such as age, education, intelligence may be relevant); *see also* United States v. Gutierrez-Mederos, 965 F.2d 800, 803 (9th Cir. 1992) (rejecting consideration of defendant’s cultural heritage in determining consent).

111. *See* Devon W. Carbado, (*E*)racing the Fourth Amendment, 100 MICH. L. REV. 946, 1011 (2002) (contending such coercion may not automatically be apparent). Carbado asserts that failing to engage race in consent analysis obscures realities. *Id.* at 1025.

112. *See* Weaver, *supra* note 101, at 1198-99 (finding troublesome that officers need not inform citizens of right to refuse).

113. *See* Schneckloth v. Bustamonte, 412 U.S. 218, 289 (1973) (Marshall, J., dissenting) (discussing citizen misperceptions about scope of police authority). Criticizing the majority, the dissent argued, “the holding today confines the protection of the Fourth Amendment against searches conducted without probable cause to the sophisticated, the knowledgeable, and, I might add, the few.” *Id.*

114. Strauss, *supra* note 75, at 242-44 (arguing many African-Americans interpret police requests as demands and fear consequences of disobeying); *see also* Fitch, *supra* note 106, at 124-25 (discussing why black citizens uncomfortable asserting Fourth Amendment rights). African-Americans who are aware of their rights under the Fourth Amendment often do not feel free to assert them as a result of their deeply rooted distrust of police. *See* Fitch, *supra* note 106, at 124-25; *see also* Maclin, *supra* note 78, at 28 (criticizing Court as rejecting reality that citizens fear unpleasant consequences of refusing requests by police). Maclin criticizes the Court for continuing to decide cases with the assumption that citizens have genuine choice when police request consent to search. *See* Maclin, *supra* note 78, at 28.

115. Florida v. Jimeno, 500 U.S. 248, 251 (1991) (stating standard for determining scope of consent); LAFAVE, *supra* note 70, § 8.1(c) (asserting even if consent voluntary evidence seized may be outside scope of search).

116. LAFAVE, *supra* note 70, § 8.1(c) (stating importance of looking at express or implied limitations

unrestricted consent to search, police may carry out a general search.¹¹⁷

As a general proposition, the scope of the search is “defined by its expressed object.”¹¹⁸ When one gives consent to search for a specific item, it generally allows police to search in areas or containers that might reasonably contain the item.¹¹⁹ When the search request states a particular purpose, the authorized consent should be interpreted to include the “intensity of police activity necessary to accomplish the stated purpose.”¹²⁰ In *United States v. Dichiarinte*,¹²¹ police obtained consent to search defendant’s home for drugs; during the search they found and read incriminating documents.¹²² In suppressing the documents, the court held that police cannot procure a defendant’s consent to search for specific items and subsequently use his or her consent to go on a general fishing expedition.¹²³

Even if one gives consent to search for a specific item or purpose, there are circumstances where police may seize other objects outside the scope of the search.¹²⁴ If police find weapons, contraband, or evidence of criminal activity in plain view during the search, those items may lawfully be seized.¹²⁵ Even when officers are searching for a specific item, they are not required to deliberately ignore other items that meet the requirements of the plain view

attending consent).

117. See *United States v. Fleck*, 413 F.3d 883, 892 (8th Cir. 2005) (explaining consent form authorizing “search of house” reasonably interpreted to include every room); *United States v. Strickland*, 902 F.2d 937, 941 (11th Cir. 1990) (explaining scope of consent determined by police officer’s reasonable interpretation of what consent encompasses). For example, police may open closed but unlocked containers, especially when looking for items that are likely to be concealed; however, it would be unreasonable to break open a locked container. See *Jimeno*, 500 U.S. at 251-52 (determining consent to search car did not reasonably include authorization to pry open locked suitcase). The Court noted however, that it would be reasonable for police to open a closed paper bag while looking for drugs. See *id.*

118. *Id.* at 251 (citing *United States v. Ross*, 456 U.S. 798, 824 (1982)) (stating scope of warrantless search defined by place in which object of search likely found). In *Jimeno*, the police officer informed the defendant that he would be looking for narcotics, thus the Court stated it was objectively reasonable for the officer to conclude that general consent to search the car included consent to search containers in the car that might hold drugs. *Id.*

119. See *supra* note 118 (giving example of scope of search when police expressed stated purpose).

120. LAFAVE, *supra* note 70, § 8.1(c).

121. 445 F.2d 126 (7th Cir. 1971).

122. *Id.* at 128-29 (stating facts).

123. *Id.* (acknowledging repeated reference to officer’s interest in drugs only). But see *infra* note 124 and accompanying text (asserting certain evidence in plain view permissible to seize).

124. LAFAVE, *supra* note 70, § 8.1(c) (describing when police can seize incriminating items beyond scope of consent found during appropriate search). In comparing consent and search warrant cases, LaFave states “[j]ust as in a search warrant case, a description of the objects to be sought in the search limits the intensity of the search, but does not bar the seizure of other incriminating items found in the course of an appropriately limited search.” *Id.*; see also *Welch v. State*, 219 S.W.3d 156, 159 (Ark. 2005) (rejecting argument defendant could place limit on type of contraband officers could seize).

125. See *Dichiarinte*, 445 F.2d at 130 (noting such items found in course of an appropriate search may be seized); see also *United States v. Coraine*, 198 F.3d 306, 310 (1st Cir. 1999). The court stated that because evidence of gambling could have been located almost anywhere, the police were within the permissible bounds of the search when they found a gun behind some furniture. See *id.*

doctrine.¹²⁶

5. Third-Party Consent

a. Consent by a Parent to Search Common Areas of the Home

The Supreme Court has recognized that a third-party's consent to search may be held valid against a defendant in some circumstances.¹²⁷ Under *United States v. Matlock*,¹²⁸ a third party may validly consent to a search if they possess "common authority over or other sufficient relationship to the premises or effects sought to be inspected."¹²⁹ Consent is also valid when police obtain consent from a third party whom they reasonably believe possesses common authority over the premises, but in fact does not.¹³⁰

In *Georgia v. Randolph*,¹³¹ the Supreme Court held that consent to search given by one co-inhabitant over the express objection of another cannot prevail.¹³² The holding of *Randolph* is limited to situations where both occupants have equal interest in the property.¹³³ An individual with a predominant interest may validly consent to a search even when the person with lesser interest is present and objecting.¹³⁴ For example, a parent's consent to search the family home supersedes a child's objections because of the parent's superior interest in the home.¹³⁵

Under *Matlock*'s common authority analysis it is reasonable to uphold a parent's consent to search common areas of the home based on the ordinary expectation that a parent has joint authority or control over such rooms.¹³⁶ Further, under *Randolph*, a parent's interest in the common areas of the family home is superior to that of their children and would be upheld even over the

126. See *Harris v. United States*, 390 U.S. 234, 236 (1968) (holding officers may lawfully seize items in plain view if rightfully in position to view); *United States v. Sanchez*, 89 F.3d 715, 719 (10th Cir. 1996) (upholding seizure of drugs although consent to search was for weapons).

127. See *infra* note 129 and accompanying text (explaining validity of third-party consent).

128. 415 U.S. 164 (1974).

129. *Id.* at 171 (1974) (noting case precedent validating third-party consent).

130. *Illinois v. Rodriguez*, 497 U.S. 177, 186, 188 (1990) (explaining factual correctness not necessary, but officers must always be reasonable).

131. 547 U.S. 103 (2006).

132. See *id.* at 114, 123 (holding present inhabitant's express objection to consent dispositive regardless of another occupants consent). "[T]he question [is] whether customary social understanding accords the consenting tenant authority powerful enough to prevail over the co-tenant's objection." *Id.* at 121.

133. See *id.* at 114-15. The Court notes that unless people living together fall into a recognized hierarchical relationship, neither co-tenant has the right to prevail over the others. See *id.*

134. LAFAVE, *supra* note 70, § 8.3(d) (citing parent-child relationship as one such situation).

135. See *Randolph*, 547 U.S. at 114 (explaining parent as head of household has superior interest in home).

136. See *United States v. Matlock*, 415 U.S.164, 171 (1974) (setting forth common authority standard); see also *Commonwealth v. Sanna*, 674 N.E.2d 1067, 1072 (Mass. 1997) (holding father's consent to search living room valid against defendant son); *United States v. Rith*, 164 F.3d 1323, 1328 (10th Cir. 1999) (holding child had no expectation of privacy negating parents' consent to search under *Matlock*).

child's objection.¹³⁷ Courts have upheld the search of a child's personal belongings left in a home's common areas based upon the validity of a parent's consent to searches of common spaces.¹³⁸

b. Parental Authority to Consent to a Search of a Child's Bedroom

The parent-child relationship gives rise to a presumption that parents have control over the entire family home.¹³⁹ It is clear that parental consent to search a child's bedroom will be valid when factors suggest that the child does not have sufficient exclusive possession of the bedroom.¹⁴⁰ However, the presumption of control may be rebutted by facts that tend to establish that the child does have exclusive possession of the bedroom.¹⁴¹

A child likely does not have exclusive control where he shares a room, where family members have easy access to the room, or where others use the room for storage.¹⁴² In these circumstances, a child's possession of the bedroom is subservient to that of his parents and it is logical to conclude that the parents have the right to enter and to allow entry of others into the room.¹⁴³ While the presumption of control is rebuttable, it is rarely overcome.¹⁴⁴

137. See *supra* note 135 (explaining parent as head of household has superior interest in home); see also *In re Tariq A-R-Y*, 701 A.2d 691, 692 (Md. 1997) (validating mother's consent to search of child's clothing left in dining room over child's objection).

138. See *In re Tariq A-R-Y*, 701 A.2d at 696 (applying *Matlock* in holding mother's consent valid). The court noted that the child assumed the risk that his mother would search the vest herself, or expose it to search by others. See *id.*

139. See *Rith*, 164 F.3d at 1330 (noting certain relationships give rise to rebuttable presumption of control); see also *Vandenberg v. Super. Ct.*, 87 Cal. Rptr. 876, 880 (Cal. Ct. App. 1970) (discussing parental authority as justification for validity of consent to search child's room).

In the exercise of his parental authority a father has full access to the room set aside for his son for purposes of fulfilling his right and duty to . . . obtain obedience. Permitting an officer to search a bedroom in order to determine if his son is using or trafficking in narcotics appears . . . to be a reasonable and necessary extension of a father's authority and control over his children's moral training . . ."

Id. (internal citations omitted).

140. See *LAFAVE*, *supra* note 70, § 8.4(b) (explaining reasoning behind holding parent's consent valid); see also *People v. Daniels*, 93 Cal. Rptr. 628, 632 (Cal. Ct. App. 1971) (holding mere fact son has bedroom in family home does not give exclusive control).

141. See *Rith*, 164 F.3d at 1330 (asserting presumption of control can be rebutted by certain facts). Such factors include an agreement that no one enters the room, a lock on the bedroom door, consistently keeping the door closed, and the payment of rent. *Id.* But see *LAFAVE*, *supra* note 70, § 8.4(b). LaFave asserts that parents maintain full authority over the entire home and may choose to exercise this authority, notwithstanding a minor's instruction not to enter his bedroom. See *id.*

142. See *United States v. DiPrima*, 472 F. 2d 550, 551 (1st Cir. 1973) (holding mother's consent valid where defendant shared bedroom with siblings and mother used closet); *Pratt v. United States*, 214 F.App'x 532, 535 (6th Cir. 2007) (acknowledging mother had regular access to son's room in holding her consent effective).

143. See *Colbert v. Commonwealth*, 43 S.W.3d 777, 781 (Ky. 2001) (asserting parents even retain authority to exclude child from bedroom).

144. *Compare Becknell v. State*, 720 S.W.2d 526, 528 (Tex. Crim. App. 1986) (holding father lacked

Consent to search has been held valid even when the child does not share a bedroom and the parents do not regularly access the room.¹⁴⁵ Further, even where the child locks his bedroom door, a parent's consent to search has been upheld.¹⁴⁶ Thus, "even if a minor child, living in the bosom of a family, may think of a room as 'his,' the overall dominance will be in his parents."¹⁴⁷

c. Parental Authority to Consent to a Search of a Child's Locked Container

A third party who has authority to consent to a search of a bedroom does not automatically have authority to consent to a search of closed containers within the bedroom.¹⁴⁸ People generally have an expectation of privacy in the contents they place in a closed container.¹⁴⁹ This proposition is consistent with ordinary expectations of privacy—common experience dictates that "mankind's valises, suitcases, footlockers, strong boxes, etc. are frequently the objects of his highest privacy expectations."¹⁵⁰

In deciding whether a third party has authority to consent to a search of a closed container, courts may take into account the following factors: whether the container has historically been given a high degree of privacy; steps the owner has taken to show his subjective expectation of privacy; the apparent nature of the third party's interest in the container; and whether the third party has consented out of safety concerns.¹⁵¹ Thus, even if a parent can consent to a search of their children's bedroom generally, police may be unreasonable in

authority where college aged son padlocked door), *with In re Salyer*, 358 N.E.2d 1333, 1334-37 (Ill. App. 1977) (holding mother's consent valid even where fifteen year old son kept room locked). The difference between these two cases seems to be the age of the children; where the child is under eighteen, the overwhelming majority of courts hold consent valid. *See State v. Crumb*, 704 A.2d 952, 971 (N.J. Super. 1997) (noting New Jersey among majority holding parent has right to consent to search of child's room).

145. *See United States v. Rith*, 164 F.3d 1323, 1331 (10th Cir. 1999) (holding parents' consent to search valid despite insufficient factual findings to support parents' joint access).

146. *See State v. Jones*, 475 A.2d 1087, 1094 (Conn. 1984) (determining parents had authority although son kept door locked and parents never entered without permission). The court noted that the parents believed they had a right to enter without permission if they needed to. *Id.*

147. *See United States v. DiPrima*, 472 F.2d 550, 551 (1st Cir. 1973) (holding mother's consent to search son's bedroom valid).

148. *See United States v. Karo*, 468 U.S. 705, 725 (1984) (O'Connor, J., concurring) (noting consent to search home may not be effective for containers in home); *see also United States v. Salinas-Cano*, 959 F.2d 861, 865 (10th Cir. 1992) (explaining control of premises does not necessarily bestow authority over all containers). The police officer must be objectively reasonable in believing the third party had authority to consent to a search of the container. *See United States v. Infante-Ruiz*, 13 F.3d 498, 505 (1st Cir. 1994) (holding police unreasonable in believing driver had authority to consent to search of passenger's briefcase).

149. *United States v. Fultz*, 146 F.3d 1102, 1105 (9th Cir. 1998) (discussing privacy expectation). "A person does not forfeit that expectation of privacy merely because the container is located in a place that is not controlled exclusively by the container's owner." *Id.*

150. *United States v. Block*, 590 F.2d 535, 541 (4th Cir. 1978) (noting some containers have higher expectations of privacy than others).

151. *See Salinas-Cano*, 959 F.2d at 864-65 (setting forth factors); *accord United States v. Waller*, 426 F.3d 838, 847-48 (6th Cir. 2005); *United States v. Robinson*, 999 F. Supp. 155, 162 (D. Mass. 1998); *Commonwealth v. Sardone*, No. 98-1073, 1999 Mass. Super. LEXIS 205, at *12-14 (1999); *see also LAFAVE*, *supra* note 70, § 8.5(d) (noting courts forgiving where consent given in interest of host's safety).

determining that the parent has the authority to consent to searching specific areas that the child has taken special steps to keep private.¹⁵²

III. ANALYSIS

A. *Constitutionality of Safe Homes*

Because the right to be secure in the privacy of one's home is a fundamental principle of the Fourth Amendment, it is not surprising that an initiative seeking entry into citizens' most private and protected property has invoked so much opposition.¹⁵³ Critics of the Safe Homes Initiative maintain that it is unconstitutional, but the argument requires a closer look.¹⁵⁴ As discussed above, citizens may voluntarily respond to police—even when they approach their home—and it is well established that police may constitutionally search a person's home upon valid consent.¹⁵⁵ The constitutional issue turns on whether the totality of the circumstances renders the encounter an illegal search and seizure.¹⁵⁶

1. *The Fourth Amendment Fails to Protect the Communities Safe Homes Targets*

a. *A Knock on the Door*

The Safe Homes analysis begins when the police knock on the door.¹⁵⁷ On

152. See *United States v. Clutter*, 914 F.2d 775, 777-78 (6th Cir. 1990). Family members may not have authority to consent to a search of an enclosed area in which one family member has clearly manifested an expectation of exclusivity. See *id.* at 778; see also *United States v. Block*, 590 F.2d 535, 541 (4th Cir. 1978) (noting authority extends to objects in plain view but not automatically inside of closed space). In *Block*, the Fourth Circuit held that although the defendant's mother had authority to consent to a search of her son's bedroom, she lacked the authority to consent to a search of the footlocker in the bedroom. See *id.*

153. See *supra* note 42 and accompanying text (citing strong opposition from community); *supra* note 63 and accompanying text (discussing importance of home in Fourth Amendment context).

154. See Cramer, *supra* note 9 (noting former Boston police lieutenant's "queasy" feeling Safe Homes does "end run around the Constitution."); Shabazz, *supra* note 12 (criticizing Safe Homes). "The Constitution was written with a very specific intent, and that was to keep the law out of private homes unless there is a written document signed by a judge and based on probable cause." *Id.* The ACLU was handing out signs opposing Safe Homes for residents to place in their windows. See Allison Klien, *Gun Search Program to be Request Only*, WASH. POST, Apr. 4, 2008, at B1, available at http://www.washingtonpost.com/wp-dyn/content/article/2008/04/03/AR2008040304541_pf.html. The signs stated "[n]o consent to search our home. This home protected by the United States Constitution." *Id.* Other critics suggested "[i]t's not acting in partnership with the community when police officers respond to tips by asking people to give up their constitutional rights and permit their homes to be searched without a warrant". Hampton, *supra* note 44, at 19 (opining Safe Homes requires sacrificing civil rights).

155. See *supra* note 66 (explaining consent exception to warrant); *supra* notes 86-87 and accompanying text (discussing doorstep encounters initiated by police); see also *Police, Activists Battle*, *supra* note 42 (noting Boston Police Commissioner's statement Constitution does not forbid officers' seeking or citizens' providing consent).

156. See *supra* note 94 and accompanying text (stating "knock and talk" not per se unconstitutional).

157. See *Scott v. State*, 782 A.2d 862, 867 (Md. 2001) (indicating starting point for constitutional

one hand, there is an argument that Safe Homes is a properly conducted “knock and talk.”¹⁵⁸ When police knock at the door of a residence requesting a parents consent to a search, parents can say no and close the door, or voluntarily choose to speak with the BPD.¹⁵⁹ On the other hand, this generalization fails to acknowledge some of the specific characteristics of the target communities and social realities faced by the members of those communities.¹⁶⁰ The objective analysis for evaluating whether a seizure occurred fails to take into account factors that may make a significant difference.¹⁶¹

The long history of mistrust between the African-American community and the BPD has played a large role in the community resistance, and is emblematic of the problems inherent in failing to consider race in the “knock and talk” analysis.¹⁶² In a community riddled with fear and mistrust of law enforcement, it is hard to imagine that a mother faced with police at her doorstep would feel free to shut the door and ignore them.¹⁶³ While a citizen living in a predominately white affluent community might have a completely different experience in a Safe Homes situation, both communities receive the same treatment under a seizure analysis.¹⁶⁴ Although, police have pledged to act in a completely non-coercive manner, such a promise fails to take into account the fact that a simple encounter between police officers and minority citizens is, in many instances, inherently coercive.¹⁶⁵

However, as noted above, the standard for assessing whether a seizure occurred is objective.¹⁶⁶ The fact that the particular citizen does not feel free to

examination of “knock and talks”).

158. See *supra* note 94-96 and accompanying text (explaining no constitutional problem if initial encounter not a seizure and consent voluntary); see also *supra* Part II.A.2. (explaining Safe Homes program).

159. See *supra* notes 94, 96 and accompanying text (detailing circumstances for establishing properly conducted “knock and talk”); see also SAFE HOMES BROCHURE, *supra* note 9 (detailing operation of Safe Homes program).

160. See *supra* notes 97-98 and accompanying text (discussing criticisms of “knock an talk” procedure as thwarting Fourth Amendment safeguards); *State v. Ferrier*, 960 P.2d 927, 933 (Wash. 1998) (describing force associated with “knock and talk” practices disallows informed decision-making of home dweller).

161. See *supra* notes 105-106 and accompanying text (discussing failure to take certain factors or characteristics into account as problematic).

162. See *supra* note 107 and accompanying text (discussing importance of looking at history of tension between law enforcement and certain classes of citizens). Much like criticism of “knock and talks,” Safe Homes has been criticized as “inherently intimidating and coercive.” See Lovett, *supra* note 44 (discussing coercive nature of Safe Homes).

163. See *supra* note 114 and accompanying text (explaining certain groups have difficulty refusing police requests).

164. See Ward, *supra* note 106, at 245 (criticizing *Schneekloth* Court’s failure to recognize minorities more apprehensive of police than non-minorities).

165. See Lovett, *supra* note 44 (quoting Sarah Wunsch, staff attorney with ACLUM). Wunsch further maintains that the underlying purpose of showing up on the doorstep is to intimidate and to increase the likelihood of eliciting consent. See *id.*; see also *supra* note 54 (discussing unfairness of selectively implementing programs in certain areas and not others).

166. See Strauss, *supra* note 75, at 231 (noting consensual encounter need not comply with Fourth Amendment); see also *United States v. Drayton*, 536 U.S. 194, 202 (2002) (utilizing objective test).

ignore the police is irrelevant.¹⁶⁷ As long as a reasonable person would feel free to end the encounter, the citizen's particular susceptibilities or characteristics will have no bearing on the determination of whether the person was seized.¹⁶⁸

b. Consent

If the BPD receives consent to search from the initial encounter, the consent procured must be analyzed separately from whether or not a seizure occurred.¹⁶⁹ The vulnerabilities of Safe Homes' target communities raise legitimate concerns that consent will never be truly voluntary under the circumstances.¹⁷⁰ The test used to determine the voluntariness of consent may make a difference in the outcome.¹⁷¹

In Massachusetts, courts still consider the subjective factors set forth in *Schneckloth* in order to determine whether a person voluntarily consented to a search.¹⁷² In other jurisdictions, however, courts may focus only on objective factors.¹⁷³ Given the inconsistencies in the consent analysis, it would be helpful if the Supreme Court weighed in on the issue.¹⁷⁴ Furthermore, the Supreme Court has not considered the constitutionality of "knock and talks"—a decision that could prove helpful for the consent analysis.¹⁷⁵

i. Schneckloth Analysis

The Safe Homes target communities consist of primarily minority populations whose education is limited and whose primary language is often not English—demographics that raise concerns about police overreaching.¹⁷⁶

167. See Strauss, *supra* note 75, at 229-33 (noting Supreme Court adopted objective approach to determine meaning of seizure). Under this type of analysis, a person's subjective feelings do not factor into the constitutional calculus. See *id.*

168. See Strauss, *supra* note 75, at 231-32 (noting persons "susceptibilities and attributes" irrelevant to determination of whether seizure occurred); *supra* note 87 and accompanying text (discussing example where court focused on police behavior in assessing seizure).

169. See *supra* note 96 and accompanying text (discussing "knock and talk" analysis).

170. See, ACLUM, *supra* note 44, at 1 (doubting consent granted under Safe Homes likely to be genuinely voluntary). The American Civil Liberties Union of Massachusetts argues, even assuming people are able to understand the language, that people have a hard time saying no when confronted by policemen at their door. See *id.*; see also *supra* note 67 and accompanying text (explaining consent must be given freely and voluntarily); Cramer, *supra* note 9 (reporting residents may be too intimidated to refuse consent when police on doorstep); Lovett, *supra* note 44 (arguing situational pressures prevent parents from making free, clear, intelligent decisions).

171. See *supra* note 75 and accompanying text (explaining trend focusing on reasonableness as opposed to subjective factors).

172. See *supra* notes 79-80 and accompanying text (suggesting Massachusetts considers subjective factors in consent analysis).

173. See *supra* note 75 (noting many courts shifted focus to objective factors).

174. See *supra* notes 75-78 and accompanying (discussing uncertainty in application of consent).

175. See *supra* text accompanying note 94 (stating Supreme Court has yet to determine constitutionality of "knock and talks").

176. See Steven Gray, *A Welcome Mat for Gun Searches*, TIME, Nov. 26, 2007, available at

While consent analysis under *Schneekloth* takes citizens' levels of education and intelligence into account, the BPD, civil rights activists, and community leaders have persistently provided information about Safe Homes to the affected communities to ensure that citizens are fully informed of all aspects of the program.¹⁷⁷ The American Civil Liberties Union of Massachusetts (ACLU) has been especially vocal in attempting to educate citizens' about their rights.¹⁷⁸ Although the Supreme Court has explicitly ruled that subjects of consent searches need not be warned of their right not to consent, the BPD has made clear that they will inform residents of this right.¹⁷⁹

The BPD recognized that some residents might not speak or understand English and assured citizens that it would make bilingual officers available.¹⁸⁰ However, the BPD has not clarified—and it seems unlikely—that a bilingual officer will be present for every search.¹⁸¹ If the BPD arrives at a home that requires a bilingual officer and informs the resident that a bilingual officer is on the way, this initial encounter may rise to level of a seizure.¹⁸² To avoid this problem, the BPD could prepare consent forms in the various languages predominate in the communities.¹⁸³

Although many parents may become emotional upon hearing their child may possess a gun, emotional distress must impair that parent's ability to make decisions in order to render consent involuntary.¹⁸⁴ While parents may be upset

<http://www.time.com/time/nation/article/0,8599,1687895,00.html>. "Many of these folks are from third world countries, where anyone in uniform symbolizes oppression . . ." *Id.* (quoting Jorge Martinez, executive director of social service organization in Dorchester, Massachusetts); see also Maria Cramer, *Police Set to Search for Guns at Home: Voluntary Program is Issue in Community*, BOSTON GLOBE, Feb. 9, 2008, available at http://www.boston.com/news/local/massachusetts/articles/2008/02/09/police_set_to_search_for_guns_at_homes/ [hereinafter *Voluntary Program Issue in Community*] (noting program viewed as violating residents' privacy in communities with large minority and immigrant populations); Posting of Mark Segraves to Malcontent Minute, <http://www.wtopnews.com/?nid=695&sid=1372986> (Mar. 27, 2008, 1:40 EST) (discussing potential for abuse and language barriers).

177. See *supra* text accompanying note 70 (listing *Schneekloth* factors). See generally SAFE HOMES BROCHURE, *supra* note 9 (describing details of Safe Homes); ACLU, *supra* note 44 (attempting to further educate residents about program); The Blackstonian, People's Report, <http://prophecycommunications.com/blackstonian/downloads/safehomespackage.pdf> (providing community take on Safe). The Blackstonian provides an online community newspaper that reports on issues affecting the black communities' throughout Boston. See <http://www.blackstonian.com>.

178. See ACLU, *supra* note 44 (briefing paper). The ACLU has made this material available in both English and Spanish. See The Blackstonian, *supra* note 177 (including English and Spanish language ACLU materials). Local ACLU organizations have provided support for similar initiatives in other cities. See Klien, *supra* note 154 (discussing cards and fliers Washington D.C. ACLU passed out to citizens).

179. See *supra* note 72 and accompanying text (discussing Court's decision not to require Miranda warnings for consent); *Police, Activists Battle*, *supra* note 42 (noting ACLU passing out flyers titled "Know Your Rights" in community); SAFE HOMES BROCHURE, *supra* note 9 (stating police will inform citizens of their right to refuse).

180. See SAFE HOMES BROCHURE, *supra* note 9 (noting bilingual officers available).

181. See *id.* (stating bilingual officers "will be made available" without providing more details).

182. See *supra* note 88 (noting length and intrusiveness may transform consensual encounter into seizure).

183. See *Florida v. Royer*, 460 U.S. 491, 505-06 (1983) (plurality opinion) (concluding defendant's detention constituted illegal seizure in part because shorter detention feasible).

184. See *supra* note 70 and accompanying text (discussing emotional state factor in determining whether

by the situation—presence of police officers, the knowledge that their child may possess a gun, and the request to search their home—as long as the police are not overtly coercive, the fact that a parent is upset will not invalidate their consent.¹⁸⁵ Further, the reality is that most people living in the communities targeted by Safe Homes are aware of the youth violence plaguing the community, as well as the Safe Homes program, thus diminishing the element of surprise.¹⁸⁶

ii. Objectively Reasonable Analysis

Under an objective analysis, consent will be upheld if the BPD's conduct is reasonable.¹⁸⁷ The BPD carefully constructed Safe Homes to operate in as non-coercive a manner as possible.¹⁸⁸ When conducting searches under Safe Homes the BPD planned to send three plain-clothed officers familiar with the juveniles in the communities, thus diminishing the intimidation associated with an unfamiliar officer in uniform.¹⁸⁹

Further, community members would accompany the officers; residents who see a familiar face will likely feel more at ease in the presence of the police officers.¹⁹⁰ The BPD's program places great importance on the comfort of affected residents and thus it is unlikely they would approach homes at unusual hours or display weapons.¹⁹¹ By taking care to avoid using pressure or authoritative tone, the BPD can work to ensure their behavior is not considered unreasonable and potentially coercive.¹⁹²

Considering the BPD's awareness of community concerns, the likelihood of police conduct rendering consent involuntary is slim.¹⁹³ However, even under the subjective analysis, which includes consideration of coercive tactics, courts will likely hold consent was voluntary.¹⁹⁴ The subjective factors courts take

consent voluntary).

185. See *United States v. Marin*, 761 F.2d 426, 434 (1985) (holding consent valid despite emotional distress unless police coercion present).

186. See *supra* note 177 and accompanying text (indicating community well aware of Safe Homes); *supra* note 70 (discussing effect of emotional distress on one's ability to voluntarily consent).

187. See *supra* note 77 and accompanying text (explaining objective analysis focuses on police conduct).

188. See *supra* notes 35-39 and accompanying text (describing safeguards in Safe Homes).

189. See SAFE HOMES BROCHURE, *supra* note 9 (explaining officers assigned to Boston Public Schools would conduct visits); BOSTON POLICE DEPARTMENT, SAFE HOMES INITIATIVE MYTH V. FACTS BROCHURE (on file with author) [hereinafter SAFE HOMES MYTH V. FACTS] (stating one sergeant, two officers in civilian clothes will conduct searches to reduce attention).

190. See *supra* note 34 and accompanying text (detailing community members involvement in Safe Homes program).

191. See *Voluntary Program Issue in Community*, *supra* note 176 (noting "big trust issue" with Safe Homes Program); See also *supra* note 71 (discussing factors courts use in determining coercion).

192. See *supra* note 71 and accompanying text (discussing effect of coercion on voluntariness of consent).

193. See *supra* notes 43-47 and accompanying text (discussing community opposition and police response).

194. See *supra* note 71 and accompanying text (noting law enforcement's consideration of coercive behavior by law enforcement); *supra* note 74 and accompanying text (discussing Supreme Court's

into consideration do not provide enough protection for the communities targeted by Safe Homes.¹⁹⁵

The community is skeptical of every piece of the Safe Homes program, even components that are for its benefit.¹⁹⁶ The BPD's literature states that "trained officers will carefully explain your rights."¹⁹⁷ In response, one community group alleged that the BPD often violates Miranda rights and questioned how the community could trust the BPD to inform them of their rights in this situation.¹⁹⁸ Many members of the community do not believe the BPD's claim that a person may withdraw consent at anytime, fearing that once he or she signs a form he or she loses control.¹⁹⁹ Community members fear that police will retaliate if they refuse to give consent, despite the BPD's assurance that this will not be the case.²⁰⁰ Given the history of tension between law enforcement and members of the African-American community and the strong opposition to Safe Homes, it seems unfair to subject these communities to the program, and then argue that the process is constitutionally sound based on an analysis that does not account for some of the most important circumstances.²⁰¹ The BPD and the courts do a serious disservice to citizens by assuming that all people respond to police encounters in the same way.²⁰²

c. Scope and Authority

Even assuming the "knock and talk" is conducted properly and a parent voluntarily consents to a search, the scope of consent and whether a parent has

encouragement of consent searches).

195. See Strauss, *supra* note 75, at 235 (arguing even if *Schneekloth* factors fully considered, standard still fails). Strauss suggests the voluntary consent analysis fails to consider the subjective perceptions of people of color as well as the inherent feel of coercion in encounters with law enforcement. See *id.*

196. See generally The Blackstonian, *supra* note 177 (analyzing each part of program and alleging BPD not truthful).

197. See The Blackstonian, *supra* note 177 (questioning whether residents will be properly informed of legal rights).

198. See The Blackstonian, *supra* note 177 (questioning whether rights properly protected under program); see also Bob Barr, Editorial, *Boston Police Jump Gun with 'Safe Homes'*, ATLANTA JOURNAL-CONSTITUTION, Feb. 27, 2008, at 13A (criticizing Safe Homes' "slick brochures" and "smooth rhetoric"). Former Congressman and U.S. Attorney, Bob Barr, alleged that Safe Homes "exhibits a cynical disregard for the rights of the citizenry, even as it cleverly cloaks the program in language pretending to protect the people." *Id.*

199. See The Blackstonian, *supra* note 177 (disbelieving BPD claim that resident may withdraw consent anytime).

200. See ACLUM, *supra* note 44, at 1 (claiming retaliation for refusing consent a big concern); Mass Lawyers Weekly Staff, *supra* note 10 (noting parents fear no future police aid in response to withholding consent); see also *supra* note 114 and accompanying text (discussing Court's failure to take real fear associated with refusing consent into account).

201. See *supra* Part II.B.3. (discussing "knock and talk" procedure and constitutional analysis in context of vulnerable minorities).

202. See Maclin, *supra* note 78, at 65-67 (noting Supreme Court Justices' assumptions about citizen-police encounters based on their experiences and imagined experiences). The article's author criticizes the Supreme Court's failure to take subjective factors into account in determining whether a police-citizen encounter is reasonable. See *id.*

the authority to consent to a search of their child's property still raises issues.²⁰³ The BPD claim that Safe Homes the child's bedroom is the only part of the home they are seeking consent to search.²⁰⁴ However, sometimes a child keeps belongings in other areas of the home, so a thorough search will necessarily include more than just the child's room.²⁰⁵

The BPD claims that it will inform parents that they may limit the scope of the search.²⁰⁶ However, a parent concerned that there may be a gun in the home will likely want the police to search anywhere they think a gun may be hidden and wish to rely on the BPD's superior knowledge as to likely hiding places for guns.²⁰⁷ Even, if the search is limited, the BPD may still see or hear things in plain view while walking through the house to the child's bedroom.²⁰⁸

A child is likely to keep a gun hidden or stored in a secure container, and thus police may assume they have broad authority to search most areas of the child's bedroom.²⁰⁹ This may pose several problems.²¹⁰ First, police may come across evidence of other crimes while lawfully searching for guns.²¹¹ If the child possesses any other contraband, it is likely to be hidden in the same places that a gun might be hidden.²¹² This puts the child at a greater risk for being charged with another crime.²¹³

Second, while parents have authority to consent to a search of common areas and the child's bedroom, they may not have actual or apparent authority to consent to a search of certain containers within the bedroom.²¹⁴ Because police are looking for weapons, they will likely seek consent to look in containers.²¹⁵ A parent's consent to search may be valid for boxes, buckets, or containers that are not hidden or sealed in a way to connote a high expectation of privacy, but

203. See *supra* note 115 and accompanying text (discussing scope of consent); *supra* note 145-49 and accompanying text (discussing third-party authority).

204. See *SAFE HOMES MYTH V. FACT*, *supra* note 189 (asserting BPD looking for weapons in child's bedroom).

205. See *supra* notes 117-18 and accompanying text (discussing scope where police seek particular item); see also *SAFE HOMES BROCHURE*, *supra* note 9 (explaining what happens during Safe Homes visit).

206. See *SAFE HOMES BROCHURE*, *supra* note 9 (stating parents will be informed they may limit scope).

207. See Nadler, *supra* note 101, at 173 (noting people often defer to police because position of authority connotes possession of greater information).

208. See *supra* notes 122-26 and accompanying text (discussing plain view doctrine).

209. See *Florida v. Jimeno*, 500 U.S. 248, 251 (1991) (indicating search of containers likely holding item sought reasonable when general consent to search given).

210. See *infra* text accompanying notes 211-20 (discussing problems posed by likely location of guns).

211. See *supra* note 125-26 and accompanying text (discussing possibility of police finding and seizing other items); see also Cramer, *supra* note 9 (noting possibility BPD will find other items, like drugs, during search).

212. See *supra* note 124-26 and accompanying text (suggesting police not required to overlook items outside scope of search).

213. See *supra* notes 39-40 and accompanying text (noting no guarantee of blanket immunity).

214. See *supra* Part II.B.5 (discussing parental authority to consent to search).

215. See *United States v. Ross*, 456 U.S. 798, 820-21 (1982) (holding scope of search defined by where object sought may be found); see also *supra* note 149 and accompanying text (discussing privacy expectation in containers). It is reasonable to assume that people store private things, such as guns, in containers. See *id.*

the same cannot be said of suitcases, footlockers, purses, backpacks, or well-hidden sealed containers.²¹⁶ Police may be unreasonable in concluding a parent has authority to consent to a search if the parent disclaims interest in the container, or if the child is present and claims ownership.²¹⁷ However, the parent's consent to search commonly arises out of concern for the safety of the household and the people in it, a factor that tends to make consent reasonable.²¹⁸ Whether or not consent to search a closed container is valid will depend on the facts of each circumstance, and the resident must trust the BPD to conduct the search reasonably.²¹⁹

B. Other concerns

1. Unintended Consequences Resulting from Safe Homes

Many people may not be fully aware of the possible consequences to a consent search.²²⁰ Residents may not understand the repercussions of guns being tested or other evidence being found.²²¹ While the program focuses on seizing guns, there are no guarantees that other evidence found or information learned will not lead to the prosecution of someone living in the home.²²² Police have not addressed whether or not what they observe during a search will enable them to go to court and get a search warrant.²²³

While the state government has agreed to provide amnesty for gun possession, the federal government is free to prosecute.²²⁴ If police make an

216. See *United States v. Salinas-Cano*, 959 F.2d 861, 864 (10th Cir. 1992) (noting type of container important privacy consideration); see also *United States v. Sealy*, 830 F.2d 1028, 1031 (9th Cir. 1987) (acknowledging other types of containers not typically used to preserve privacy); *United States v. Block*, 590 F.2d 535, 541 (4th Cir. 1978) (highlighting certain containers with "highest privacy expectations").

217. See *Salinas-Cano*, 959 F.2d at 864 (discussing factors for determining authority to consent to search of container).

218. See *id.* (noting courts forgiving when third-party initiates search out of safety concerns and citing cases).

219. See *supra* note 151 and accompanying text (putting forth factors); see also *Illinois v. Rodriguez*, 497 U.S. 177, 186, 188 (1990) (stating police need not be right only reasonable).

220. See ACLUM, *supra* note 44, at 1-2 (expressing concern police will not ensure residents understand all consequences). "People on the street may say: 'This is great. I'm letting them in . . . [b]ut those are the people [to be] concerned about because they haven't been educated about the hazards.'" *Opposition From Residents*, *supra* note 42 (quoting Sarah Wunsch, attorney for ACLUM).

221. *Boston Police Launch Program to Search Homes for Guns*, NASHUA TEL., Nov. 18, 2007, available at <http://www.nashuatelegraph.com/apps/pbcs.dll/article?AID=/20071118/NEWS02/71118040/-1/news> (commenting on racial advocates concern over residents not understanding full implications of search).

222. See Barr, *supra* note 198 (asserting program claiming nothing will happen if something unlawful found based on false promise); see also *supra* note 40 (explaining if seized gun linked to serious crime prosecution may follow). Assistant Suffolk County District Attorney, Gerald Stuart, admits that people cannot expect police to "turn a blind eye" if evidence other than firearms is found during a search. See Jason Pramas, *Boston City Council Hearing on Safe Homes Initiative Sparks Lively Debate*, OPEN MEDIA BOSTON, June 5, 2008, <http://www.openmediaboston.org/node/183>.

223. See *supra* notes 39-40 and accompanying text (indicating no guarantee of blanket immunity).

224. *Statement of Johnny Barnes*, *supra* note 47 (discussing possible consequences of search).

arrest it could carry immigration consequences—a disconcerting prospect considering the high immigrant population in the target communities.²²⁵ The BPD admits they will likely not ignore large quantities of drugs, the definition of which is up to the discretion of the police officer.²²⁶ The vague language and possibility of unforeseen consequences is a hurdle the BPD is having a hard time getting over.²²⁷

Residents who live in public housing fear that they may lose their homes based on information obtained in the search.²²⁸ Residents may not realize that incriminating evidence is in their home, and there is no way to know what visitors or family members have left behind.²²⁹ If a home is visited under the program, it will be kept confidential as long as no public safety emergency exists; however, the BPD has not provided a precise definition of what constitutes a public safety emergency.²³⁰ Further, it is difficult for the BPD to reassure public housing residents since City Councilor Mike Flaherty has publicly stated that he thinks the BPD should report their findings to the Boston Housing Authority.²³¹

Even though Safe Homes is intended to help troubled youth, many opponents believe that such a program will only lead to more problems.²³² The officers conducting the searches are those assigned to the city's schools, thus the ACLUM is concerned that these officers may share information with school administrators about information learned through the search.²³³ Even if no guns are found in a home, officer's may see evidence indicating "gang affiliation," potentially providing school administrators with information that may allow them to assert that they have the reasonable suspicion needed in

225. See ACLUM, *supra* note 44, at 2 (citing concerns regarding immigration).

226. See *supra* note 39 and accompanying text (discussing ramifications of other illegal evidence found during search); see also The Blackstonian, *supra* note 177 (asserting drugs found may lead to arrest based on "undetermined and unspecified" amount).

227. See *Voluntary Program Issue in Community*, *supra* note 176 (noting community concerns of possible consequences). Deputy Superintendent Gary French responded to concerns by stating that, "There are a thousand what ifs with this program . . . I don't see us running into a lot . . . of the worst-case scenarios that are being put out there." *Id.*

228. See ACLUM, *supra* note 44, at 2 (outlining negative consequences associated with Safe Homes).

229. See Hampton, *supra* note 44 (noting residents may not know what is in their homes).

230. See *Opposition From Residents*, *supra* note 42 (reporting "public safety emergency" exists if plan to use gun in school or hit list found). The BPD claims that if a gun is found in a home, the discovery would be kept confidential under *most* circumstances. See *id.*

231. See Bianca Vazquez Toness, *BPD Plans Warrantless Searches*, WBUR.ORG, Dec. 11, 2007, http://www.wbur.org/news/2007/73155_20071211.asp (discussing reaction to BPD plan at City Hall hearing). Flaherty believes that police should not grant immunity to homes where guns are found, reasoning that it is unfair to the other public housing residents. See *id.*

232. See *Police Launch Scaled Back Program*, *supra* note 45 (noting program intent, highlighting criticism). Reverend Jeffery L. Brown agrees with the BPD that, "this is a program that is designed to save lives and to brighten the lives of our young people." *Id.*

233. See ACLUM, *supra* note 44, at 2 (fearing school officers would share certain information with school if aware).

order to search that juvenile when he comes to school each day.²³⁴ The ACLUM also suggests that if a gun is found and is linked to a crime with which the juvenile is charged, the juvenile may be suspended from school pending the outcome, or, if the juvenile is found guilty or enters a plea the student may be expelled.²³⁵ These concerns highlight the potential for Safe Homes to exacerbate the problem of “funneling young people out of the Boston Public Schools and into the Department of Youth Services.”²³⁶ Critics argue that these possible consequences will do little to improve the quality of life of people living in the poor neighborhoods targeted by Safe Homes.²³⁷

2. *Effect on Relationships*

In St. Louis, part of the FSP’s success came from the community’s involvement in every aspect of the program, including referrals; nevertheless, opponents in Boston argue that Safe Homes encourages neighbors to “snitch” on each other.²³⁸ Considering that police do not need to corroborate tips before approaching a home, there is potential for citizens to abuse the referral process.²³⁹ In fact, there was so much opposition to allowing other citizens to refer people for Safe Homes that part of scaling back the program included taking out the referral component.²⁴⁰ However, this contradicts research finding that citizen expertise is a central tenet of community policing.²⁴¹

Safe Homes has been criticized as usurping parental responsibility—critics argue that residents should not call the police merely because they are having a hard time parenting.²⁴² Instead, critics postulate that parents who believe their

234. *See id.* (suggesting evidence such as knives and drugs may lead administrators to assert reasonable suspicion); *see also* Robert E. Shepherd, Jr., *Juvenile Justice*, 5 CRIM. JUST. 27, 28 (1990) (discussing reasonable grounds for school searches). School officials need not obtain a warrant to search students so long as they have “. . . reasonable grounds for suspecting that the search will turn up evidence that the student has or is violating either the law or the rules of the school.” Shepherd, *supra* note 230, at 28 (quoting *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)).

235. ACLUM, *supra* note 44, at 2. The ACLUM clams that juveniles will be suspended if the school principle determines that the juveniles “continued presence in school would have a substantial detrimental effect on the general welfare of the school.” *Id.*

236. *See id.* (analyzing possible consequences Safe Homes may have on Boston schools).

237. *See* Barr, *supra* note 198 (arguing Safe Homes will not benefit Boston communities); *Statement of Johnny Barnes*, *supra* note 44 (suggesting program exposes willing residents to unanticipated consequences).

238. *See* ACLUM, *supra* note 44, at 3 (arguing encouraging citizens to refer police to neighbors may be counterproductive); *supra* note 27 and accompanying text (discussing community involvement in relation to success of FSP);

239. ACLUM, *supra* note 44, at 3 (opining community referrals not a good idea); *Police, Activists Battle*, *supra* note 42 (suggesting relying on community tips will create animosity and suspicion in neighborhoods).

240. *See supra* note 45-47 and accompanying text (discussing scaled back version of Safe Homes).

241. BILCHIK, *supra* note 8, at 88 (describing importance of relying on community members); *see also supra* note 27 (noting FSP less successful without community referrals); COMMUNITY POLICING DEFINED, *supra* note 11 (defining community policing).

242. *See* Kyle de Beausset & Howard Manly, *Police “Safe Homes” Plan Leads to Heated Debates*, BAY ST. BANNER, Feb. 28, 2008, *available at* <http://www.baystatebanner.com/local12-2008-02-28> (noting Senator Diane Wilkerson’s opinion that Safe Homes abdicates parental responsibility); *Program Aimed at Getting Guns Off Streets Questioned: Some Say Safe Homes Violates Rights*, BOSTONCHANNEL.COM, Mar. 4, 2008, <http://www.thebostonchannel.com/news/15490870/detail.html> (questioning impact of Safe Homes).

child has a gun know enough to call the police and do not need the police infringing on their responsibilities as parents.²⁴³ Further, because this program targets parents who have at-risk youth, the possible consequences of allowing the BPD to search their homes for weapons is unlikely to foster a better relationship between parent and child.²⁴⁴

However, the BPD sees Safe Homes as a positive program for parents who want to get guns out of their homes without the guilt of turning in their children.²⁴⁵ Not only is Safe Homes a way for families to avoid the consequences of criminal charges for possession of a firearm, but it also provides social services to families clearly in need of help.²⁴⁶ While some parents may know how to handle the possibility that their child has a gun, this program is an important resource for those parents who need help with their tough kids.²⁴⁷ Even if a parent ultimately denies a request to search, the fact that the police sought out the home will certainly indicate that there may be a problem, and in many cases will encourage the parent to follow up with their child.²⁴⁸ Furthermore, police initiated requests empower the parent, giving them a starting point for an already difficult conversation with their child, allowing for a sense of concern rather than baseless accusations.²⁴⁹

3. *Could Safe Homes Work?*

While there is no way to know without allowing the program to operate, the

243. *Police Launch Gun Program*, WASH. TIMES, Mar. 25, 2008, available at <http://www.washingtontimes.com/news/2008/mar/25/police-launch-gun-program/> (reporting criticism of program as infringing on parental rights).

244. See Brooks Lyman, Letter to the Editor, THE BOSTON HERALD, Apr. 28, 2008, at 20 (suggesting negative parent-child relationship consequences when parent allows search); Lovett, *supra* note 44 (discussing criticisms of Safe Homes Program in Boston). In addressing the consequences for parents of utilizing the Safe Homes Program, Massachusetts State Representative Gloria Fox noted, “[i]f you snitch on your son, you’ve got to live with that.” Lovett, *supra* note 44.

245. See Mass. Lawyers Weekly Staff, *supra* note 10 (commenting Safe Homes is a “win-win”).

246. See Lovett, *supra* note 44 (discussing potential benefits of Safe Homes). The BPD gave an example of a case where a parent called about a gun her 15-year-old son may have had; when police arrived they found the gun. See *id.* However, this was before Safe Homes and the youth was left to face criminal charges. See *id.* This is the type of situation that Safe Homes would have been ideal for. See *id.* The BPD states that social services or clergy will follow up with homes visited. See SAFE HOMES MYTH V. FACT, *supra* note 189 (providing for follow up). But see Lovett, *supra* note 44 (discussing residents’ fears that BPD may not refer family to services needed).

247. See Barr, *supra* note 198, at 13A (noting BPD claims program designed to help parents with no control over child). MPD Police Chief Cathy L. Lanier asked critics to think about what it is like for a single mother or grandmother who is petrified of her teenage son and does not know how to get weapons out of his control. Courtland Milloy, *Lanier’s D.C. is One Big Unruly Family*, WASH. POST, Mar. 26, 2008, at B01 (providing Lanier’s views on importance of MPD’s Safe Homes program).

248. See EVALUATION, *supra* note 27, at 28 (noting SLPD valued message sent out to community by showing up at homes).

249. See Cramer, *supra* note 9 (discussing positive reaction to BPD Safe Homes). “What I like about this program is it really is a tool to empower the parent . . . [i]t’s a way in which they can get a hold of the household and say, ‘I don’t want that in my house.’” *Id.* (quoting Rev. Jeffery L. Brown, cofounder of the Boston TenPoint Coalition).

fact that many searches in St. Louis turned up guns, as well as the high level of juvenile shooting deaths in Boston, indicates that juvenile gun possession is a serious problem.²⁵⁰ Critics are quick to conclude that Safe Homes will not work; unfortunately, the opposition has been so strong that no one will ever know whether Safe Homes would have been successful.²⁵¹

Even if the program was successful, history has shown that a program like Safe Homes will not solve the problem alone.²⁵² Safe Homes targets only a small part of a much bigger issue.²⁵³ However, while Safe Homes alone may not completely solve the problem of youth violence, it has potential to produce positive effects.²⁵⁴

Indeed, there are community groups and residents that support Safe Homes.²⁵⁵ Safe Homes is a preventive tool, intended to step in before a violent act is committed and to prevent a child from ending up in jail.²⁵⁶ Juveniles often hold guns for older gang members who are vulnerable to longer federal and state sentences for illegal gun possession, and Safe Homes may reduce the likelihood that juveniles will be used to store guns.²⁵⁷

IV. CONCLUSION

It is true that there is nothing unlawful about the BPD knocking on doors in Boston's high crime communities, either randomly or after they have received some sort of tip, and seeking to speak with the parents of a minor living in the home. Further, it is completely proper for the BPD to ask the parent for consent to search for guns. The Supreme Court's Fourth Amendment jurisprudence tends to favor consent searches. Although the Supreme Court's

250. See *supra* note 25 and accompanying text (noting significant amount of guns seized in St. Louis); *supra* notes 5-7 (discussing youth violence in Boston).

251. See *supra* note 43 and accompanying text (noting criticism from communities).

252. See Jonathan M. Smith, Editorial, *In D.C., What an 'Operation' Won't Fix*, WASH. POST, June 15, 2008, at B08 (stating such initiatives do little to stop crime). Smith cites initiatives such as "Operation Clean Sweep," "Operation Caribbean Cruise," and "Weed and Seed" as examples of programs in Washington D.C. that were ineffective in stopping violence. See *id.*

253. See Lovett, *supra* note 44 (pointing out underlying problems go beyond a few kids possessing guns).

254. See Braga and Brown, *supra* note 32 (arguing Safe Homes "viable way to get guns out of the hands of high-risk juveniles").

255. See Cramer, *supra* note 9 (citing support for program among some community members). Ronald Odom, whose thirteen-year old son was murdered walking home from playing basketball stated, "[e]veryone talks about curbing violence . . . This is definitely a head start." *Id.* Rev. Wayne Daley, of the Boston Ten Point Program, supports Safe Homes noting, "[w]e need to be responsible as a community, and the police [are] . . . committed to transparency; so we need to be part of this program." Shabazz, *supra* note 12. Reverend Jeffery Brown who plans to accompany BPD on searches, said "I understand political correctness and the potential civil liberties risks. But until you have bullets flying over your head, I suggest you take your leaflets and keep them in the suburbs." Gray, *supra* note 176 (suggesting support strong in impacted communities).

256. See SAFE HOMES BROCHURE, *supra* note 9 (providing program designed to keep kids safe, out of custody); see also Cramer, *supra* note 9 (noting purpose of program is to make streets safer not incarcerate people).

257. See Shabazz, *supra* note 12 (suggesting Safe Homes may reduce juvenile access to guns).

analysis would likely deem Safe Homes constitutional, it is far from clear that the program would be the best approach to reducing youth violence.

Should people in these communities have to worry that at anytime the BPD may knock on their door seeking to intrude into the privacy of their home? The surprising number of consents that police obtain through “knock and talks” raises red flags about whether consent will ever actually be voluntary. Moreover, the wounds from the history of police abuses in African-American communities have not been healed. Without the trust of the community, a community-based police initiative will never succeed.

However, Safe Homes is full of good intentions—getting guns out of the hands of juveniles without the threat of prosecution is a promising premise. The BPD needs to work on building trust with the African-American community in order to get residents to support Safe Homes. Further, Boston’s success in reducing youth violence in the 1990s was based on implementing a variety of programs, and the BPD should consider adding additional prevention and intervention programs and making Safe Homes part of a larger plan to reduce youth violence.

The BPD should consider tape-recording all encounters—this would further the BPD’s goal of being as transparent and accountable as possible and prevent the potential for a “swearing match” between the police and resident. Having pre-made consent forms in languages known to be spoken in the community or ensuring a bilingual officer was available in areas known to be populated by non-English speaking residents would help reduce the potentially coercive nature of police-citizen encounters. The BPD needs to make sure that families will receive follow up social services and should consider working with community centers and other groups to come up with ways to get targeted juveniles involved in positive activities.

The BPD needs to look closely at the criticism of the Safe Homes program and address each one specifically to clarify just how Safe Homes will operate. The literature the BPD has provided does not provide this clarity, leaving too many open ended questions. Although this will take time and effort, once the community is involved and supportive, Safe Homes has a chance at being a successful mechanism of reducing gun violence in Boston’s communities.

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