

# THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING

## **Policy and Oversight**

**Submitted Oral & Written Testimony Received by January 31, 2015**  
**Presented Alphabetically by Last Name**

### **Primary Source Documents**

This document contains all Primary Sources for oral and invited written testimony submitted to the Task Force for the listening session on Policy & Oversight. Thirty-four documents are compiled alphabetically by last name when available or by the name of the organization when not provided. A complete list of submissions for A-Z is provided as an easy reference when looking for specific names or organizations.

#### **Note:**

\*Oral presenters who submitted written testimony

\*\*Invited written testimony

#### **Oral Presenters Who Submitted Written Testimony:**

1. Alpert, Geoffrey: Professor-University of South Carolina
2. Aziz, Malik: National Chair-National Black Police Association
3. Beck, Charles: Chief -LAPD
4. Brown, Christina: Black Lives Matter
5. Buckner, Brian: President-National Association of Civilian Oversight of Law Enforcement
6. Cabral, Samuel: President-International Union of Police Associations
7. Charney, Darius: Attorney-Center for Constitutional Rights
8. Gorenberg, Hayley: Deputy Legal Director-LAMBDA
9. Harrell, Kathy: President-Fraternal Order of Police, Queen City Lodge
10. McCarthy, Garry: Chief-Chicago PD
11. McDonald, Jay: President-Fraternal Order of Police, Ohio
12. McHale, Michael: President-National Association of Police Organizations
13. Medlock, Harold: Chief-Fayetteville PD
14. Monroe, Rodney: Chief-Charlotte-Mecklenberg PD
15. O'Connor, Barbara: President-National Association of Women Law Enforcement Executives
16. Primas, Kirk: Asst. Sheriff-Las Vegas Metropolitan PD
17. Robinson, Rashad: Executive Director-Color of Change
18. Wexler, Chuck: Executive Director-Police Executive Research Forum
19. Whent, Sean: Chief-Oakland PD

# THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING

---

## **Invited Written Testimony Submitted by Jan. 31, 2015**

1. Crawford, Dwayne: National Organization of Black Law Enforcement Executives
2. Dunn, Ronnie: Professor-Cleveland University
3. Gennaco, Michael: OIR Group
4. Hansford, Justin: St. Louis University School of Law
5. Joyce, Nola-Deputy Commissioner-Philadelphia PD
6. MacGuire, Edward: Professor-American University
7. Mazzara, Andrew: Executive Director-International Law Enforcement Forum
8. Olubukola, Gbadegesin-St. Louis University
9. Palmer, Jim: Wisconsin Professional Police Association
10. Pascoe, James: President-International Fraternal Order of Police
11. Ritchie, Andrea: Soros Fellow: LGBT Concerns
12. Ritchie, Andrea: Soros Fellow: Women of Color Concerns
13. Vansell, Kim: Director-National Center for Campus Public Safety
14. Winkler, Jim: President-National Council of Churches of Christ in the USA
15. Yang, Jenny: Chair-National Equal Employment Opportunity Commission

# TESTIMONY TO THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING

Geoffrey P. Alpert

University of South Carolina

January 30, 2015

Ms. Robinson, Commissioner Ramsey, Mr. Davis and members of the Committee, I appreciate the opportunity to testify today on the critical issues concerning Use of Force - Research and Policies. I will introduce a few issues about police use of force that have resurfaced recently and make a few recommendations to address them.

I began my career in police research in the 1980s analyzing incidents and writing the after-action reports in Miami following riots that began with the cover-up of the killing of Arthur McDuffie and several officer-involved shootings that sparked riots. That was a rough time for police – community relations and while many lessons were learned about how to heal and build social capital in communities, we seem to be re-setting the clock - like in Ground Hog Day.

The issues we faced in the 80s and today are a balance of officer and public safety. To help us understand the issues, we collect data on types and levels of police force and suspect resistance. Our most progressive agencies collect data on interactions, and include information regarding the officers, suspects, situation and environment. From many agencies we get a great **worm's eye view** of police use of force. There are excellent studies that look at a single agency or even a sample of agencies and we are able to learn a lot from them – but these events are encounters that fail – the encounter may fail because of the way a citizen behaves and the objective threat he makes to an officer or citizen – or because the officer is scared and/or makes an unreasonable decision to use force. In order to improve, in order to be successful, we need to

understand why these decisions are made. **My first recommendation is to explore officer decision making and continue to look at unsuccessful encounters as well as those that are successful** – those where officers could use force, or even deadly force but found another way to resolve the situation. There is a precedent ... in some agencies we have set up ways to measure when officers decide not to pursue a fleeing suspect so we can determine the situations where officers make decisions to give chase or not to chase a suspect. One downside is gathering and analyzing the data that are required to help us understand these situations.

Police-citizen interactions that result in the use of force also require the gathering of information from all persons who are involved or observed the behavior. Today, unlike earlier decades we also have smart phones that record, audio recorders, CCTV, cameras in police cars and body-worn cameras. There is a lot of information to collect, interpret and analyze in order to determine exactly what happened. Without knowing about successful encounters, we are left knowing about the failures – again, those encounters that result in force.

Unfortunately, we don't even know very much about these from all agencies. Progressive police agencies collect a wealth of data, often report the information to the public and even invite research partners to help them make sense of the data. These agencies are transparent and the chief officers want to know the empirical realities of what their officers face and how they respond. Even in these agencies, with progressive leaders and well-staffed and funded offices of Professional Compliance or Internal Affairs, most uses of force and deadly force end up justified. I have read thousands of these reports and only a handful include an admission or a finding that more force than necessary, more force than reasonable, was used. And these are the best and most progressive agencies.

Some not-so-progressive agencies collect only minimal information and neither report nor share it. We know very little about these encounters – until a complaint or lawsuit is filed.

Once an investigation is controlled by the courts, a wealth of information by way of discovery of reports, statements, policies, trends, depositions, cross-examination and other forms of data collection start to paint a picture that may vary from the one told initially by those involved.

**Recommendation two is to incorporate information discovered in litigation into policy, training, supervision and accountability** – what officers and even supervisors know about policies, what they recall from training, how they manage or are supervised and held accountable may be shocking when you read a number of depositions.

**Recommendation three is to require reports that are limited to facts and observations not language that concludes**, “I was in fear of my life,” or other boilerplate language that recites policy or language from the courts. Officers need to explain **why** they were afraid, what was the threat, and why they responded the way they did! Officers need to explain more than just the “final frame,” including tactical decisions.

Once we begin to collect this critical information, it is necessary to use it.

**Recommendation four is that agencies develop Officer-Created Jeopardy training.** When Michael Berkow was Chief in Savannah, Georgia he developed this type of training where officers who had been in situations where mistakes were made or force was used, came to explain their decision-making to other officers. The better sessions included officers who explained what they did right and how potentially violent situations were resolved without violence. Other parts of the training included what some officers did wrong, why they made

mistakes, what information was missing, misinterpreted, and how they could have improved their behavior and response to suspects. The training included a discussion of what can happen when you reach inside a car to get keys, or you get too close to a suspect. The training was done by officers on the same department who had done things correctly and who had done things incorrectly and were willing to help other officers learn.

**Recommendation Five is to have agencies create a Force Factor for each use of force;** a comparative measure of the use of force. This is simply a process whereby the level of suspect resistance is subtracted from the level of officer force for each event. A more sophisticated analytical approach is to compute the Force Factor for each iteration of an encounter that involves the use of force. It is a simple computation that simply explains how much more or less force was used compared to the level of suspect resistance. This number does no more than raise a red flag when there is disproportionate force – either more or less than the level of resistance.

**Recommendation six relates to a bird's eye view of the information necessary to understand police use of force and deadly force.** I mentioned earlier that there are many studies that use single or multiple agency data – giving us a worm's eye view. While many agencies collect information on police use of force and deadly force, no single repository exists to examine patterns, trends or even anomalies. The patterns and trends we see in some agencies could be examined for regions, states, agencies of a particular size, racial composition of the neighborhood and/or police department, rate of violent crime, or other selection of variables.

As a country we keep vital statistics on so many aspects of our lives and the world in which we live but not on the highest level of government intrusion -

**It really is a national embarrassment that we do not have a clear picture of police use of force or deadly force.**

While it may take some political guidance and maneuvering, financial incentives, positive or negative, it is important to build a searchable database that includes all law enforcement agencies that empower their employees to use force. If we use as models those studies that have looked at single or multiple agencies, we can learn the important trends that politicians, policy makers, trainers and the public need to know. The media makes sensational headlines about the number of rounds fired in an encounter. What if that number is not sensational but close to the average for a specific type of situation where the suspect has a specific type of weapon? There are media reports of unarmed subjects being shot. What if there were ways to know what the suspect did that prompted the officer to use deadly force? What if the agency could report the reason that each shot was fired? We could answer questions about contagion fire, the comparative frequency of force or deadly force in particular types of places or against particular types of people? We need to move beyond anecdotal to empirical!

We are in an embarrassing situation without proper use of force data from our law enforcement agencies. H.R. 1447 (Death in Custody Reporting Act of 2013), which was signed into law December 18, 2014, and the recently introduced H.R. 5866 (National Statistics on Deadly Force Transparency Act of 2014), if signed into law, together will help us understand the circumstances in which citizens die in police custody or during the process of arrest. It is just as important to collect information on all uses of force as well as deaths by any police involvement.

My colleague Chief Jeff Noble summed up our predicament by questioning the lack of meaningful accountability to protect the civil liberties of consumers of police services while the government spends aggressively to protect the American consumer from the free market.



# NBPA NATIONAL CHAIR'S RECOMMENDATIONS

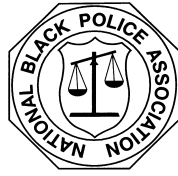
Prepared by: National Chair Malik Aziz  
[www.blackpolice.org](http://www.blackpolice.org)

PRESENTED TO THE TASK FORCE MEMBERS OF  
THE PRESIDENT'S TASK FORCE ON  
21ST CENTURY POLICING

Cincinnati, Ohio: January 30, 2015

[www.blackpolice.org](http://www.blackpolice.org)





NBPA

---

## THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING

The National Black Police Association is honored to be a part in this important conversation on community and policing. We extend thanks to President Barack Obama and the august members of *The President's Task Force on 21st Century Policing* for inviting the NBPA to offer our recommendations especially in the areas of Law Enforcement and Diversity.

The National Black Police Association was founded in 1972 by African-American police officers and our history on advocacy and activism is well documented in the history of policing in United States. It is with their struggles, sacrifice, blood, sweat, tears, and pain that thousands of officers, including myself, are able to stand and be counted in the noble profession of policing. The NBPA used their resolve to embrace and reengineer community-police partnerships before it was popular and common word. The snowball effect of negative community-police interactions have brought us to a great divide.

The NBPA will address the very pertinent and most important aspects that we believe will improve the relationship and interactions of citizens and the police.

Our Mission Statement and Bylaws Preamble have been our stable foundation of positive community-police relationships for over four decades.

### **MISSION STATEMENT**

To increase the awareness of the community, to be the conscience of the Criminal Justice System, and to enhance the quality of life in the African American Community.

### **BYLAWS PREAMBLE**

The NATIONAL BLACK POLICE ASSOCIATION, INC. is established to secure for Black people all rights and privileges afforded to citizens of the United States of America by virtue of its Constitution. Further, to work in the Black community for the following purpose:

- To improve the relationship between the police and the Black community;
- To evaluate the Criminal Justice System and its affect upon the Black community and ensure that it operates in its behalf;
- To work for the general welfare of the community as a whole;
- To encourage the enlistment and promotion of Blacks in the law enforcement profession;
- To establish the free and rapid flow of pertinent information and educational opportunities to all members of the corporation and their communities



NBPA

---

## THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING

The NBPA offers our recommendations to enhance and further positive community-police partnership. The core of each point is ARTT (Accountability, Responsibility, Transparency, & Trust). The intent is not restate numbers or statistics that are well known, well documented, and/or can be easily located in print or electronic media, but to give focused direction that community and police departments can embrace. We believe that police departments should adopt the NBPA National Program *What To Do When Stopped By The Police*.

### USE OF FORCE

The NBPA immediately calls for all police involved force incidents resulting in death NOT be handled solely by the involved agency. These incidents should be investigated by a qualified team that includes non involved agencies of the city, county, state, federal (FBI) and District Attorney's Office. The NBPA calls for all police departments to establish a qualified Special Investigations Team that involves two (2) members from the aforementioned agencies two (2) from the agency itself. Regional cooperation is the key for transparency. We believe that adding qualified and vetted civilians of non law enforcement backgrounds to this team would also be beneficial from an oversight and transparency point of view. The NBPA believes that this will provide the best chance for a less biased investigation into police involved deadly force incidents. We believe that the Department of Justice (DOJ) should mandate this as a requirement for all law enforcement agencies to establish the respective teams and a template policy of minimum requirements. All officers should be required to visit a certified counselor within 7 days after a deadly force encounter and a minimum of three times within six (6) months and six (6) times up to one year or longer. Police Departments should work with officers and certified counselors as they may experience PTSD from job related duties over the course of time. The release back to work should be supported by a licensed counselor.

The NBPA calls for all police departments to review their policies and training on deadly force. The guidelines for the review must be mandated by the DOJ and supported by national police associations that serve the diversity in policing. The force continuum must be addressed as it varies across the 18,000 police agencies. Best and/or promising practices must be at the core of all policies especially the deadly force policy.

The NBPA calls for ALL police departments offer Force Science or the similar as a seminar/workshop for a segment of law enforcement officers, citizens, community activist/advocates, district attorneys, criminal justice practitioners, defense attorneys, and media personnel. Force Science or similar training must be implemented on a consistent and regular basis delving into understanding actual deadly force encounters.

The NBPA calls for President Barack Obama and the United States Congress to convene a National Commission to facilitate a National Conversation Series involving Race, Police Brutality, and Violence in the



NBPA

---

## THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING

Black Community. We believe these National Conversations must be facilitated at the highest level of government and we must address the issues that confront and seek to divide us, painful or not.

*Disciplinary Systems and Early Intervention Programs* should be required for all departments established. The DOJ should establish guidelines with national police associations for a template policy on minimum requirements for officers entering and exiting this program. Progressive discipline and the right to appeal should always be included. The NBPA calls for the DOJ to require departments report terminated officers who travel from police job to police job under the radar with patterns of misconduct on their records. The DOJ must establish consequences for Departments who seek to employ and destroy public confidence.

### **RESEARCH and DATA COLLECTION**

The establishment of a National Repository should collect data on Deadly Encounters, Racial Profiling (vehicles and pedestrians stops), Diversity Demographics of Law Enforcements Agencies, Internal Affairs Investigations, Use of Force Involving Less than Lethal Devices, and Officers Assaulted or Killed in the Line of Duty statistics. This data should be available in one location maintained by the DOJ.

The NBPA Calls for President Obama and the US Congress to mandate that all police departments track all police involved deadly force encounters and report them to the FBI semi-annually. A National Repository must be created in the Department of Justice, FBI or Civil Rights Division, that tracks deadly force encounters involving police. The NBPA believe that departments who fail to offer training and proper follow up should come under the authority of the DOJ by consent decree or mandate. The DOJ should further mandate consequences for non-compliance. This information should be made public immediately. All departments must establish websites that list the basic information and status of each encounter resulting in the death of a citizen in its respective jurisdiction.

The NBPA Calls for the DOJ to develop template policies governing name releases of suspects and officers involved in deadly force encounters and that all police agencies adopt a policy releasing this information. Some states and cities have developed policies and laws that erode the public trust, deny the public the right to public information, or display a double standard.

### **TECHNOLOGY and EQUIPMENT**

The NBPA calls for the ALL police departments to equip all officers engaging the public as daily operations with Tasers and Body Worn Cameras. The ability to record encounters or utilize less than lethal equipment. The NBPA believe all agencies should have established policies based on the most promising practices that not only govern usage, but maintenance, training, and progressive discipline. The high cost of equipment and storage should be funded in part by the Department of Justice (DOJ). The NBPA calls for all police vehicles utilized in engaging the public to be equipped with Audio/Visual Cameras with policies as aforementioned. The NBPA calls specifically for the review of Open Records and the Freedom of



NBPA

---

## THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING

---

Information Act as we move forward in a more technological society. The cost and timelines for producing records in a timely manner erodes the public trust.

### **DIVERSITY, IMPLICIT BIAS TRAINING, and POLICE CULTURE CHALLENGES**

The NBPA mandates that all police departments institute Diversity and Implicit Bias Training as part of their certification whether it is annually or multi-year increments. Every Police Academy should offer no less than forty (40) hours of training inclusive of race, religion, and gender and that training should not be solely classroom based. Implicit Bias Training should be part of the hiring program and all officers should all undergo implicit bias retraining yearly. It should also be made available to community activist/advocates, crime watch leaders, and anyone attending a Citizen Police Academy.

The NBPA Calls for all departments to meet the demographics of the community in which they serve and protect. The development of a plan of action should be in place to immediately recruit and retain police officers of color. No academy classes should be allowed to commence unless sincere efforts are made to diversify their respective police force. The NBPA calls for the DOJ to collect the demographic stats annually from the 18,000 police agencies just as they report UCR statistics. It is not enough to mandate diversity, but it becomes necessary to diversify command ranks in departments that have historically failed to develop and/or promote qualified and credentialed officers to executive and command ranks.

### **COMMUNITY POLICING, CIVILIAN OVERSIGHT and GRAND JURIES**

The NBPA calls for all police departments to develop Community Based Policing policies that are concrete in words and practice. The NBPA believes community engagement from the top down should be the proactive norm and not a sound bite when tragedy occurs. The NBPA supports the establishment of Civilian Review Boards or Civilian Commissions that are granted the authority to call citizens and officers to the Board for further clarity on completed investigations that leave some citizens unfulfilled. We believe cities should establish CRBs to enhance the public trust that police departments are investigating cases in a proper, competent, and non-biased manner. We believe these boards should include former non-agency retired law enforcement personnel and internal and external attorneys. The NBPA calls for an immediate end to sealed records of testimony involving police officers in Deadly Force or Criminal Misconduct incidents. The NBPA believes the DOJ, and state and local departments should support officers with incentives to reside in the cities they serve that could include pay, housing, education, and home storage vehicles.

### **DEMILITARIZATION: MASS DEMONSTRATIONS AND THE USE OF MILITARY EQUIPMENT**

The use of military equipment obtained through the 1033 program is of great concern to the NBPA in regards to necessity and deployment. We believe that the government should require proof of why the equipment is needed, the policy that will govern its use, and the ability to maintain the equipment for a period of time. The DOJ must periodically review agencies who have obtained equipment. The type of



NBPA

---

## THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING

---

equipment that causes major concern is armored vehicles (MRAPs), aircraft (helicopters), rifles, and grenade launchers. The MRAP is a warfare vehicle meant to serve in a wartime capacity. Our urban streets are not in that type of war. While it has a benefit to police departments the negative perception associated with the design, color, and usage on America's streets negates the benefits of daily operation. *The biggest issue comes with the leadership deploying this type vehicle in peaceful demonstrations should be avoided especially when officers or citizens lives are not at stake.* Most of this equipment is under the authority of special operation teams who are skilled at the duties they perform. The police commander in authority of this equipment should be given specialized training on leadership, deployment methods, and understand the sensitivities involved.

### **POLICE LEADERSHIP**

The NBPA calls for an immediate stop to police departments that have city or state policies that mandate that police chiefs come from within the city, county, or state agency. For police departments that need outside thinking and a culture change this must occur. Police chiefs should have qualifications standards such as a graduate and/or post graduate degree; a certificate from a validated command college; and a minimum years of tenure for smallest to largest cities. The residing chief should be required to attend at least one other command level college and continuing education for senior/executive level government officials from respectable universities and colleges. We believe qualifications for appointed ranks should be established and published. We ask that the DOJ seek to make diversification of the FBI National Academy attendees a priority to lead the way forward.

Every agency should and city should strive to meet 3 officers per 1000 and that at a minimum of 70 percent be assigned to patrol and community based policing. We believe a minimum ratio of one (1) first line supervisor for every seven (7) officers and one (1) lieutenant for every seven (7) first line supervisor should be the minimum standard. We believe that national associations should work together to offer a standard of excellence that city governments should strive to meet. All first line supervisors and lieutenants should be required to take department sponsored leadership, management, diversity, and ethics training.

The NBPA is available to answer any questions for clarity and better community-police relationships.

Respectfully Submitted,

*Malik Aziz*

Malik Aziz  
National Chair  
National Black Police Association

## **Civilian Oversight of the Police in Los Angeles: Collaboration, Activism and Outreach.**

### **Testimony of Charlie Beck, Chief of Police, Los Angeles Police Department.**

Commissioner Ramsey (Chuck), Dr. Robinson (Laurie), Ms. Rice (Connie) and distinguished members of the task force, I am pleased to be able to contribute to the discussion and debate on what I view as the most important issue facing law enforcement, our communities and in a broader sense, our society today- the issue of civilian oversight of the police.

We have seen situations throughout the Country where mistrust and resentment of the police have built up over generations. When a tragedy occurs, that deep-seated resentment coupled with a lack of transparency, candor and accountability sets off civil unrest as members of the community feel that they have no other recourse but to protest.

Once that protest starts, unless you have some connection to the community, unless you can demonstrate that you as a police department and as a city realize that “the People are the Police,” then all of the progress we have made can be erased in an overnight media cycle. And that is a chilling prospect.

“Policing cannot be judged only by an absence of crime, it must be measured by the presence of justice.”

As we have seen, it doesn't matter how low we push the crime rate if we don't build public confidence as we go. It is not enough for a modern police department to be effective in reducing crime year upon year, we must strive to build greater trust between the police and the people we are sworn to protect and serve.

We have had our share of protests in LA over the last few months, mostly peaceful, but we still face challenges. We have turned a time of crisis into an opportunity to engage in dialogue and to embrace new technology to foster trust and accountability. We have taken a hard, honest look at what we can do better in terms of evolving the culture of policing and improving and enhancing our training model...all done with an eye to building greater trust and better communication with the community.

A large part of building and maintaining the trust of the community lies in the ability of government to demonstrate transparency and accountability. The Los Angeles Police Department is formally governed by the Board of Police Commissioners, a five-person, civilian body with each member appointed by the Mayor. The Commission has formal authority to hire the Chief of Police, to set broad policy for the Department and to hold the LAPD and its Chief accountable to the people. This model has evolved since the Commission was founded in 1889 and now includes an active and meaningful exchange of ideas that fuels innovation and reform efforts.

In Los Angeles, we are fortunate enough to have a well-established civilian oversight system in place that not only sets broad policy and holds the Chief accountable but also encourages

*Prepared for the President's Task Force on 21<sup>st</sup> Century Policing Listening Session.  
January 30, 2015. Cincinnati, Ohio*

collaboration. When it works, and I would argue that it is working in LA, civilian oversight comes down to COLLABORATION, ACTIVISM and OUTREACH.

## **Collaboration**

In Los Angeles civilian oversight differs from the traditional notions of a civilian review board, police auditor, or ombudsman approach. Civilian oversight means working collaboratively with the Mayor and City Council; the Board of Police Commissioners and the Inspector General; community groups, the media, and activists. It means working with police management, the rank and file and with our union.

As noted by the National Association for Civilian Oversight of Law Enforcement in their recent testimony before this task force,

“civilian oversight provides a mechanism to bring together the many stakeholders involved in supporting trusted, respectful, and effective law enforcement efforts. Oversight breaks down the walls between police and the public and enhances their understanding of each other...”

That statement really gets to the heart of the matter. We recognize that respect and trust leads to effective policing. Collaboration rather than resistance is a powerful and worthwhile process and one of the keys to success in public safety and crime reduction.

Collaboration means embracing tough issues together and with a common purpose.

The best example of collaboration in the context of civilian oversight is the way in which the City of LA has approached the use of body worn cameras. A couple of years ago, before the recent high profile uses of force in Ferguson, New York and LA, the LAPD began looking at widespread implementation of body-worn cameras. Police Commission President Steve Soboroff recognized the importance of these devices for public safety and for citizen oversight and raised funds in 2013 from the private sector to purchase cameras. We began to test different models in earnest while our research partners applied for and received Federal funds from the National Institute of Justice to evaluate their use.

Our Mayor, Eric Garcetti, and City Council announced their intent to equip all of our officers with body worn cameras. The Police Commission reached out to community-based organizations and individuals to obtain their input about the cameras, and as recently as two weeks ago the LAPD, Police Commission, and Inspector General convened two special community meetings about policies related to on-body cameras. And this coming week we are meeting and conferring with the police union to discuss the policies that will affect our men and women on the street.

The collaboration around this issue speaks to the way civilian oversight is embedded in our normal business practices in Los Angeles. The community, the civilian board of police commissioners and the police department work together with our elected officials to implement meaningful reform. This doesn't mean that we always agree. In fact, it is during the times that we disagree that we make the most progress toward ongoing reform and communication.

It's easy to work with supporters, of whom we have many in Los Angeles, but it is often much more meaningful to actively engage with your detractors. Criticism, activism and engagement can lead to tremendous gains when it comes to public safety.

## Activism

So, in Los Angeles we are again fortunate to have individuals, organizations and political leadership that are willing to "dispute the passage," with us and to hold up a mirror to our operations for us to examine.

We've also found that working with activists directly reduces anxiety and anger. Recently, a local activist group concerned about officer-involved shootings had camped out in front of police headquarters. They were angry, frustrated and disenfranchised. On a number of occasions, members of the group violated the law and were arrested. The divide between these activists and the police was widening.

Then, at the groups urging and in collaboration with our City Council President, Herb Wesson, we took a meeting with their leadership. While we could not meet their direct demands due mainly to due process and legal constraints, we did enter into dialogue with the group and we even altered our enforcement posture in front of headquarters. In demonstrating a more open approach to their protest, we literally broke down the barriers between us by taking down the barricades in front of police headquarters. The meeting reduced the tension that had been mounting and the group ended up holding a closing ceremony to end their eight week protest.

During my career, I have had a long term and productive relationship with many activists and advocacy groups, including Connie Rice's **Advancement Project**. Connie went from suing the police department, quite regularly, on behalf of her clients to working hand in hand with us to improve conditions in some of our toughest neighborhoods.

Violence is down in these areas, and with time, our officers have realized the importance of what has been called "relationship policing." That relationship with Connie and with other local activists over time started to change our thinking. We began to see the value of embracing criticism and oversight and of just listening to another point of view.

## Outreach

The **Community Safety Partnership** is a good example of engaging the community and building trust where it is needed most, in the public housing projects in Watts. Instead of an invading army to suppress crime, we assigned 45 officers to serve for five years at three housing projects in Watts and at an additional housing project in East Los Angeles. Through a partnership with Advancement Project and the Housing Authority of the City of Los Angeles, the program involves officers working side by side with residents and community members to develop and implement sustainable programs, eradicate crime, and address quality of life issues. But most importantly it bridges the gap between the community and the LAPD.

Relationship based policing is what the Community Safety Partnership is all about. People that have high levels of interaction with police want to have a relationship with the cops they deal



with. The officers go into the housing developments with the intent NOT to make arrests, but to create partnerships, create relationships, to hear the community and see what they need and then work together to make those things happen.

LAPD Captain Phil Tingirides and his wife Sergeant Emada Tingirides who spearheaded that program for the LAPD have been recognized for their unconventional collaborative outreach efforts by President Obama and both sat in Michelle Obama's box at the State of the Union Address this year.

## **Closing**

There is a divide in America today and much of it comes down to mistrust and a lack of understanding. In order to bridge that divide we as police leaders must fully embrace true and meaningful community oversight. We must not retreat and grow defensive in the face of criticism and conflict. We need to rise to the occasion, reach outside of our “command and control” comfort zone and develop new ways to connect to the people we police AND to our officers who are out there every day working to improve conditions and protect our communities.

The true spirit of meaningful civilian oversight of the police relies on **collaboration** among City leaders, dogged and determined **activism** and ongoing community **outreach**.

## **Recommendations**

1. Enhance police training and education
2. Introduce public education on police operations, like the Citizens Police Academy
3. Expand use of relationship policing model, like Community Safety Partnership
4. Formalize relations with activists and embrace community input
5. Leverage technology to build trust, like body-worn and in-car video cameras
6. Develop more research-based interventions for crime prevention
7. Implement data-driven performance measures that include community surveys

Christina D. Brown Testimony  
Policy and Oversight  
Mass Demonstration Task Force  
Presidential Task Force on 21st Century Policing  
January 30, 2015

Greetings to the members of the President's Task Force on 21st Century Policing. My name is Christina D. Brown, I am a founding organizer of Black Lives Matter Cincinnati. Black Lives Matter Cincinnati arose to address a local void in Black millennial actions in response to the nationwide and local protest to state violence. I come before you today to provide context and recommendations on mass demonstrations. Today I insist that mass demonstrations must be navigated through the context of three lenses: interpersonally, individually, and institutionally. When adequately balanced, mass demonstrations can healthily occur, reducing the potential of escalating tension between communities, (especially communities of color) and police. Today I will provide institutional recommendations to consider implementing when navigating mass demonstrations. Institutional recommendations to improve outcomes during mass demonstrations are as follows:

- During times of visible tension between police and communities of color, reduce and suspend enforcement of minor violations.
- Eliminate usage of military grade equipment, especially within the urban core.
- Inform law enforcement to remove riot gear attire, and to maintain neutral stance during demonstrations.
- Anticipate traffic disruptions, reroute traditional traffic, only create protest barriers when necessary for protestor safety.
- Advise elected officials to deploy national guard, enforce Marshall law only in response to mass violence, not in anticipation or agitation of mass demonstration.
- When possible, identify leadership within mass demonstrations and primarily communicate through representatives, especially possibilities of arrest or deployment of force.

While I am one of many leaders in a movement of countless others, I have noted both from experience and from afar how the consequences of ignoring these considerations may play out. As a protestor I have witnessed police successfully allow mass demonstrations temporarily disrupt traffic, only to regroup and lawfully disrupt, and I have also witnessed police aggressively forewarn protestors against exercising their first amendment rights. I express these sentiments not to evoke sympathy for the masses, but to ensure consideration is given to protect those who might otherwise be targets of state violence. I hope these recommendations will be given strong consideration to truly alter the state of 21st Century policing.

Thank you for your time,

Regards,

Christina D. Brown



January 30, 2015

Charles H. Ramsey  
Co-Chair  
President's Task Force on 21st Century Policing

Laurie O. Robinson  
Co-Chair  
President's Task Force on 21st Century Policing

Ronald L. Davis  
Executive Director  
President's Task Force on 21st Century Policing

**Re: NACOLE President Brian Buchner's Oral Testimony for the President's Task Force on 21st Century Policing, Policy and Oversight Listening Session, in Cincinnati, Ohio**

Dear Co-Chairs Ramsey and Robinson, Executive Director Davis, and Distinguished Members of the Task Force:

On behalf of the National Association for Civilian Oversight of Law Enforcement (NACOLE), its Board of Directors, and our membership thank you for the opportunity to address this task force today.

It's time to stop thinking and talking about civilian oversight in simple terms; oversight is a process, and like policing it is complex. There are more than 200 oversight entities across the United States. No two are exactly alike. There are civilian review boards, monitors, auditors, and inspectors general, among other models. Citizen review is not an advocate for the community or for the police. This impartiality allows oversight to bring stakeholders together to work collaboratively and proactively to help make policing more effective and responsive to the community. Civilian oversight alone is not sufficient to gain legitimacy; without it, however, it is difficult, if not impossible, for the police to maintain the public's trust.

This afternoon I would like to put forth five recommendations to increase the impact and effectiveness of civilian oversight in building public trust and improving public safety.

They are as follows:

- **First: Fund oversight initiatives.** The Department of Justice's Office of Community Oriented Policing Services (COPS Office) should promote civilian oversight and show its support by funding it, just as they do local law enforcement, with resources

**for training for oversight practitioners, as well as for the development of best practices and community engagement and outreach.** At NACOLE's 20th Annual Conference, COPS Office Director Ron Davis spoke about the important role of citizen oversight in community policing initiatives and building public trust. Effective oversight leads to more effective policing. An investment in oversight is an investment in the police. The COPS Office should actively promote and support civilian oversight, and not just in the aftermath of a critical incident, but as a part of its regular efforts to advance community policing.

- **Second: Consent Decrees.** The Department of Justice (DOJ) should include in every consent decree and negotiated settlement agreement (NSA) a provision to create civilian oversight where it does not exist or strengthen it where it does. Further, the DOJ should require a process for sustained community engagement in consent decrees. Civilian oversight has already been featured in a number of consent decrees, but not all. Placing civilian oversight in the consent decree or NSA allows for the work and progress of oversight to be shaped and monitored by the Federal courts, with input from the involved law enforcement agency, and the public. It also helps to ensure that these oversight agencies receive the proper resources and support, in the short term to achieve compliance with the NSA and in the long-term to achieve sustainable reform. And when the consent decree concludes and court supervision ends, oversight provides a mechanism for ongoing public accountability.
- **Third: Expertise.** The DOJ should include civilian oversight experts in all of its "pattern or practice" investigations, even in those jurisdictions where oversight does not currently exist. Similarly, the COPS Office should involve oversight in all of its collaborative reform initiatives. Civilian oversight practitioners are from diverse backgrounds, and include lawyers, investigators, researchers, former law enforcement officers, and community volunteers. As the practice of citizen oversight has evolved, those providing oversight services have developed a sophisticated understanding of policing, the law, and of the community's values and needs. They are uniquely positioned for objectiveness and strive to achieve the right balance between over-identification with the police and over-identification with the community.
- **Fourth: Research.** The DOJ, through its research arm, the National Institute of Justice (NIJ), should expand its justice research agenda to be more comprehensive and include civilian oversight. The NIJ recently announced its research priorities in policing for FY2015, which include such topics as police use of force, body-worn cameras, and procedural justice, among others. While proposals related to research on police oversight might fit into several of these topical areas, it is not highlighted by the NIJ in any of them. The NIJ should specifically invite research into civilian oversight and its impact on, and relationship to, policing in one or more of these areas.
- **Fifth, and finally: Effectiveness.** The NIJ must fund a national study of civilian oversight to measure the effectiveness of various approaches to oversight. The lack of research into the effectiveness of different civilian oversight models and practices limits our understanding about what works and what doesn't in oversight, as well as how to improve its effectiveness. Effective oversight leads to more effective policing, and its

time that research catches up to practice. Citizen review is now found in cities and counties both large and small, and in every geographic region of the nation. It's time that the NIJ support a study that enhances our understanding of oversight and the critical role it plays in supporting effective policing.

Thank you for allowing NACOLE the opportunity to provide input into this important process. We are committed to supporting the work of this Task Force, and NACOLE, with its vast network of oversight practitioners and community stakeholders, is ready to work together to strengthen the critical relationship between the police and the communities they serve.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Buchner', with a long horizontal flourish extending to the right.

Brian Buchner  
President  
NACOLE



# INTERNATIONAL UNION OF POLICE ASSOCIATIONS AFL-CIO

THE ONLY UNION FOR LAW ENFORCEMENT OFFICERS

SAM A. CABRAL  
International President

JOHN E. O'KEEFE  
International Secretary-Treasurer



## Written Testimony of The International Union of Police Associations, AFL-CIO, to The President's Task Force on 21st Century Policing.

The International Union of Police Associations represents more than 100,000 active-duty, rank and file law enforcement professionals and emergency medical personnel throughout this nation as well as in Puerto Rico and the Virgin Islands. Our Board of Directors is all active-duty police officers and our Executive Officers are each retired law enforcement officers. We are proud to offer our views on some of the issues being examined by this Task Force.

### The Role of Police Leadership

We believe that police leadership, from the Chief of Police to the newest hired line officer is responsible for the effective and efficient delivery of unbiased, professional law enforcement services to the communities they serve. We further believe that the Chief of Police along with their Mayor and City Council cannot accurately assess the impact of policy and procedures on that service and its impact on garnering public trust and cooperation without input from those men and women who are actually putting those policies into practice. The line officers are not meeting with community activist or political pundits, but with everyday residents of their communities. They are an invaluable link between the people and those elected or chosen to lead them. Failing to access the information and input they receive from their daily interactions with the recipients of police service is not conducive to improving the relationship with the department and the community.

*We believe that management should regularly meet and confer with the line police officer's local representatives to receive the input and feedback from the men and women on the front lines.*

### Civilian Oversight

Civilian oversight has long been a staple of policing agencies. City Councils, County Supervisors and Civil Service Commissions all provide review and oversight of police policies, procedures and disciplinary matters. We believe that any additional review by a panel of civilians in the matters of policies and procedures could be helpful.

*We recommend that any review board chosen from the public at large should be advisory only and not trump the decisions and judgments of those elected to be responsible for those matters. They must possess some rudimentary knowledge of police work and the stresses associated with the application of it. To that end, we recommend that any member of such an advisory panel, be required to undergo training including shoot-don't shoot exercises and preparation which includes pursuit driving and force scenarios coupled with role playing and problem solving in calls including domestic violence, traffic stops and crowd control.*

## Early Intervention Systems

Any early intervention system must, to be fair, view each officer in their totality. A numbers matrix, tallying up citizen complaints to trigger intervention is only feasible and credible if the officer's assignment and activity are weighed along with the number of uses of force or citizen complaints. An officer assigned to serve felony warrants in a high crime area is going to have a greater number of negative contacts than a school resource officer Beverly Hills.

*An intervention should be geared towards assisting the officer in identifying any unifying reasons for negative contacts and providing training and/or counselling to alleviate or eliminate the officer's role in the matter. The intervention might also determine that the officer is not at fault and, in fact, be a target of criminal elements attempting to have him moved from their area so as to enhance their ability to conduct their criminal enterprise.*

## Disciplinary Systems

Any disciplinary system must have the confidence of the cadre that it is fair, unbiased and equally dispensed. The goal of discipline is to alter behavior when sub-standard performance is discovered. There must be due process, transparency and thoroughness throughout. In cases of minor misconduct, the discipline must be proportional to the infraction and progressive for repeated infractions. Cases should be finalized in a timely manner so that there is a direct connection between the infraction and the imposition of discipline. This becomes even more important when allegations, if proven to be true, are of a serious or criminal nature.

## Handling Mass Demonstrations and the Use of Military Equipment

Most large departments have provided extensive training and experience in handling mass demonstrations. The same cannot be said for many of the smaller agencies. Budget constraints have prohibited this type of training.

*If the Federal government has a role in police training, one of those roles should be providing funding and resources so that smaller agencies can participate in crowd control training and exercises.*

*Military equipment is a charged description of some of the apparatus available to law enforcement to facilitate the safe and efficient exercise of their duties. Its use was made necessary by the enhanced sophistication and armament of the criminal elements ranging from drug cartels to terrorists, both foreign and domestic. The police cannot protect the public if they cannot protect themselves. Military equipment should continue to be available to agencies who can demonstrate a need for it and who can ensure that proper training and policy is in place to safeguard the public when it is deployed.*

## Research and Data Collection

*We recommend that it be mandated for all departments and agencies to participate in a national database collecting and disseminating information concerning officer involved shootings, in custody deaths and assaults on officers.. We do not see the need for ethnicity to be included in this collection, but if it is, then it should be collected for those cases involving assaults on officers as well as the seven major crimes so as to provide an accurate background in the drawing of conclusions from the numbers alone.*

## In Conclusion

The International Union of Police Associations is confident that all parties involved in this study are trying to do the right thing. We come from very different backgrounds and experiences, but we have faith in many members of this esteemed panel. That being said, this disconnect between the police and some members of the community will not grow smaller so long as those who profit from this conflict are in advisory roles within this administration.

Sam A. Cabral  
International President



**WRITTEN TESTIMONY OF DARIUS CHARNEY**  
**CENTER FOR CONSTITUTIONAL RIGHTS**  
**TO THE PRESIDENT'S TASK FORCE ON 21<sup>ST</sup> CENTURY POLICING**  
**LISTENING SESSION ON POLICY AND OVERSIGHT**  
**January 30, 2015**

I would like to thank the President's Task Force on 21st Century Policing for inviting me to testify on behalf of the Center for Constitutional Rights (CCR) on this important panel on civilian oversight of police. This session comes at a critical moment and during an intense and important national debate on police accountability and racial justice.

Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization dedicated to advancing and protecting the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights and committed to the creative use of law as a positive force for social change. For almost two decades, through litigation, legislative advocacy, research, and social movement support, CCR has challenged and sought to reform abusive and discriminatory policing policies and practices in New York City and across the country. Among our recent efforts are *Floyd v. City of New York*, a federal class action lawsuit successfully challenging the constitutionality of the New York City Police Department's (NYPD) stop, question and frisk practices, and our legal support work on behalf of grassroots police accountability activists and organizations in Ferguson, Missouri. CCR is also a founding member of Communities United for Police Reform (CPR), a coalition of more than 60 grassroots, legal, policy and academic research organizations who in 2013 won passage of the landmark Community Safety Act in the New York City Council, which created an Inspector General for the NYPD and established one of the most expansive biased policing bans in the country.

It is CCR's firm belief that the goal of an effective system of civilian oversight must be to maximize the transparency, accountability, and legitimacy of law enforcement agencies to the communities they police. With this goal in mind, CCR offers the following six recommendations for improving civilian oversight of police departments in the United States.

**I. Independent Civilian Complaint Investigative Bodies Must Be Sufficiently Funded and Have Prosecutorial Power**

While many jurisdictions around the country currently have governmental agencies independent of the local police department to investigate civilian complaints of police officer misconduct, none of these agencies have the power to actually discipline those officers who the agencies' investigations have found have committed misconduct. In virtually all jurisdictions, the power to impose disciplinary penalties on offending officers rests solely with the commissioner or chief of the police department,<sup>1</sup> as does the decision whether or not to even prosecute the officers through existing administrative disciplinary hearing processes. Moreover, in the few jurisdictions where the independent investigative bodies have been granted the power to administratively prosecute disciplinary charges against officers against whom they have sustained civilian complaints, that power is restricted to certain categories of misconduct cases and, in New York City, can even in certain cases be removed from the

investigative body altogether by the police commissioner.<sup>ii</sup>

This lack of independent disciplinary authority has in turn resulted in repeated failures by police departments to hold officers who have violated civilians' rights accountable in any meaningful way. For example, in New York City, a recent report by the NYPD's Inspector General found that in all substantiated civilian complaints against NYPD officers for improper chokeholds between 2009 and 2013 that were referred to NYPD for formal disciplinary charges against the offending officers, the NYPD either refused to administratively prosecute charges and/or rejected the recommended disciplinary penalty offered by the independent complaint investigative body, the Civilian Complaint Review Board (CCRB).<sup>iii</sup> In addition, in the *Floyd* stop-and-frisk litigation, the United States District Court for the Southern District of New York found that the NYPD's disciplinary prosecution arm, the Department Advocate's Office (DAO), has repeatedly failed to pursue disciplinary charges against officers against whom the CCRB had sustained misconduct allegations, rejecting CCRB investigators' factual findings and instead conducting its own *de novo* review of the complaint allegations in which it routinely disregarded the civilian complainant's account of the incident in question which the CCRB investigator had found to be credible.<sup>iv</sup>

These failures have in turn seriously undermined the legitimacy of existing civilian complaint and police officer disciplinary processes. While state and municipal labor and civil service laws often make it extremely difficult to transfer final disciplinary authority out of the hands of the chief or commissioner of a local police department, CCR believes giving administrative disciplinary prosecutorial power to the independent body that investigates civilian misconduct complaints is a legally and politically viable reform.<sup>v</sup> Accordingly, we recommend that the Department of Justice, through its COPS or other funding streams, provide funding and technical assistance to state and local jurisdictions to develop disciplinary prosecutorial offices within existing independent civilian complaint investigative agencies. We believe that the Administrative Prosecution Unit of New York City's Civilian Complaint Review Board, as well as San Francisco's Office of Citizen Complaints, provide useful models.

## **II. Increase Transparency of Police Department Dispositions of Disciplinary Cases**

The lack of public confidence in existing civilian complaint and officer disciplinary processes is worsened by the fact that, in so many jurisdictions, the police department's internal disciplinary process lacks transparency. Thus, in most cities, once the independent complaint investigative body has referred a sustained civilian complaint to the police department for disciplinary action, there is no way, short of filing a formal open records law request, for the complainant, much less the general public, to learn what if any disciplinary action was taken against the offending officer or the reasons for the police department's disciplinary disposition.

We therefore believe it is essential for all state and local law enforcement agencies to regularly provide data to the public on the disciplinary dispositions of all sustained civilian misconduct complaints against police officers. Such data, which can be provided in a way that protects police officer anonymity and privacy rights, will not only increase the transparency of police departments' disciplinary processes, but will allow systemic problems in those processes to be more easily identified and addressed. A model for this kind of data disclosure is the

quarterly discipline reports released by the Los Angeles Police Department.<sup>vi</sup> In addition, we believe that a police department's final disciplinary disposition of a sustained civilian complaint, including the penalty imposed and the reasons for the decision, should be provided in writing to the civilian complainant. The police officer disciplinary procedures for the Washington, DC Metropolitan Police Department provide a good model for this kind of information disclosure.<sup>vii</sup>

Accordingly, CCR recommends that the DOJ develop guidelines and/or regulations requiring state and law enforcement agencies receiving federal funding to adopt the aforementioned procedures for public disclosure of information concerning departmental dispositions of officer disciplinary proceedings.

### **III. Creation of Independent Police Auditor/Inspector General Offices to Study and Recommend Reforms to Local Police Department Policies and Practices**

Another limitation of most independent civilian complaint investigative bodies is that they are designed and equipped to investigate and address only individual cases of officer misconduct, but not problematic departmental policies and practices which may be contributing to officer misconduct. Thus, several jurisdictions have over the past two decades established, through municipal legislation or executive order, permanent governmental agencies, independent of the local police department, which are tasked with and empowered to study, report on and recommend reforms to various police department policies and procedures, including policies and procedures for investigation and disposition of civilian complaints. These agencies, often referred to as "Police Auditors", "Police Monitors" or "Inspector Generals," are normally granted extensive access to documents, data, and personnel within the subject police department and report their findings and recommendations to the police department and local government leadership, as well as to the general public.<sup>viii</sup> Cities with active and well-funded Auditor/Monitor/Inspector General offices include Los Angeles, Portland, San Jose, CA, New Orleans and New York City.<sup>ix</sup>

An obvious limitation of the police auditor/inspector general model is that such agencies can only recommend, but not require, a police department to reform its problematic policies and practices.<sup>x</sup> However, when combined with other civilian oversight models, including the one discussed in Point IV below, the police auditor/inspector general model can provide a powerful accountability tool to local government officials and community members who are committed to meaningful police reform. Thus, CCR recommends that the DOJ, through its COPS or other funding streams, provide funding and technical assistance to jurisdictions around the country to establish independent police auditor/inspector general offices. We believe that the existing agencies in Los Angeles, Portland, New Orleans, San Jose, and New York can serve as models.

### **IV. Conduct Research on Civilian Governance of Municipal Police Departments**

Currently, there are a handful of jurisdictions across the country, including Los Angeles, San Francisco, and Milwaukee, whose police departments are actually governed by a board or commission of civilians, chosen by the local mayor and/or city council. These boards and commissions essentially function like a public school board or corporate board of directors, setting policy departmental policies, and even having a say in the hiring and firing of the police

chief or commissioner, who him or herself remains in charge of the day-to-day departmental operations, and in the discipline of officers who have committed misconduct.<sup>xi</sup> Placing such policy-making authority in the hands of a civilian board that holds regular public hearings has the obvious benefit of increasing the public's access to the policy-makers of police departments, which historically have remained among the most closed-off and secretive governmental institutions in the United States. Moreover, as evidenced by the individuals who have served on the governing boards and commissions in San Francisco and Los Angeles, this model of police department governance allows for the inclusion of a diversity of perspectives beyond those of just law enforcement executives in police policy decision making. Such public access and diversity of perspectives is critical for policing in a democratic society.

On the other hand, because oversight of the day-to-day operations of police departments remain under this model in the hands of the police chief or commissioner, the ability of civilian board or commission members, all of whom work only part time, to truly impact everyday police behavior on the streets will be limited unless they are able to keep close tabs on the implementation of departmental policies and procedures. Thus, CCR believes that for a civilian board/commission police department governance model to work, it must be combined with the police auditor/inspector general model discussed in Point III above. This two-pronged oversight approach is currently employed in the Los Angeles Police Department, where the Inspector General reports to and works on behalf of the Board of Police Commissioners.<sup>xii</sup>

Accordingly, CCR recommends that the Department of Justice COPS Office conduct a study of a sample of jurisdictions of varying sizes, geographic locations, and demographics whose police departments are and are not under civilian governance to (a) determine if those departments under civilian governance tend to have better police community relations than those departments that are not, and (b) identify those aspects of successful civilian governance structures that are most likely to improve police community relations. We believe that such research could shed important light on the question of whether civilian governance is a promising reform idea for American policing.

## **V. Protect the Rights of Civilians to Record Police-Civilian Encounters**

Another important but underappreciated form of civilian oversight is civilian video recordings of police-civilian encounters. Some of the most infamous and egregious incidents of police brutality in this country over the past two decades, including the beating of Rodney King and the killings of Oscar Grant and Eric Garner, came to light primarily because of video footage taken by civilian bystanders. Even in the age of police officer body worn cameras, video footage recorded by civilians can help produce a more complete and accurate account of police civilian encounters and can act as an important safeguard when officer cameras malfunction or officers manipulate the footage which they record.<sup>xiii</sup>

Moreover, as the Department of Justice and at least two federal appeals courts have recognized, a private citizen's right to record police-civilian encounters in public places is a fundamental right protected by the First Amendment of the United States Constitution, and police seizure of a civilian's video recording equipment and/or the arrest and criminal prosecution of individuals who record police-civilian encounters "erodes public confidence in

our police departments, decreases the accountability of our governmental officers, and conflicts with the liberties that the Constitution was designed to uphold.”<sup>xiv</sup> Yet, as CCR’s own legal work on behalf of civilians recording police activity in public has taught us all too well, many police departments around the country continue to violate this fundamental constitutional right.<sup>xv</sup>

Accordingly, we recommend that the Department of Justice issue guidance or regulations for state and local law enforcement agencies receiving federal funding that require them to adopt policies and procedures protecting the rights of civilians to record police activity in public places and specify that agencies which fail to do so will lose their federal funding.

## **VI. Incorporate Community Input and Engagement into Court Monitorships**

A final civilian oversight model worth mentioning is court monitorships of police departments. Over the past two decades, the Department of Justice Civil Rights Division and several private civil rights plaintiffs have brought lawsuits and investigations involving patterns and practice of civil rights violations by various state and local law enforcement agencies around the country, which have resulted in consent decrees, settlement agreements, memoranda of understanding and court judgments appointing independent monitors to oversee and monitor those agencies’ implementation of court-ordered reforms to their unlawful policing policies and practices. Unlike the other forms of civilian oversight discussed above, these independent monitors, as agents of state and federal courts, have the power to *require* that police departments implement certain policy reforms. However, while court monitors, as a general matter, issue periodic compliance reports to the general public, they monitors do not typically interact directly with or receive input on the development and implementation of policing reforms from the communities impacted by the monitored law enforcement agency’s illegal policing practices.

There are, however, a few court-ordered reform examples that offer some promise for overcoming this limitation in the existing court monitorship oversight model. The Collaborative Reform Procedure used in the *In re Cincinnati Policing* litigation brought by the ACLU of Ohio and Cincinnati Black United Front, which incorporated input on potential reforms to Cincinnati Police Department policies and practices from 8 different community stakeholder groups in Cincinnati, resulted in the landmark Collaborative Agreement in 2002, under which the Cincinnati Police Department was required to implement a strategy of Community Problem Oriented Policing.<sup>xvi</sup> Similarly, the 2013 remedial order issued by the United States District Court for the Southern District of New York in CCR’s *Floyd* litigation, established a Joint Reform Process which, like the collaborative process in Cincinnati, requires that the court-appointed monitor and facilitator obtain the input of impacted communities into the development of reforms to the NYPD’s unconstitutional stop-and-frisk policies and practices.<sup>xvii</sup> In addition, the DOJ’s 2012 settlement of its pattern and practice lawsuit against the Seattle Police Department provided for the establishment of a Community Police Commission to review and provide input to the court-appointed monitor on policy reforms to be developed pursuant to the settlement.<sup>xviii</sup>

Accordingly, CCR recommends that the DOJ include such community input provisions in all of its future consent decrees, settlement agreements, and memoranda of understanding in its police pattern and practice cases brought under 42 U.S.C. § 14141.

---

<sup>i</sup> The very few exceptions include San Francisco, CA, and Milwaukee, Wisconsin, where officer appeals of police commissioner disciplinary decisions and, in San Francisco only, serious misconduct cases in which disciplinary penalties in excess of 10-day suspensions are contemplated are heard and decided by the civilian board or commission that governs the police department. *See* City and County of San Francisco Police Commission, *Procedural Rules Governing Trial of Disciplinary Cases* § I (adopted April 27, 2011) (hereinafter “S.F. Police Commission Disciplinary Trial Rules”); City of Milwaukee Fire and Police Commission, *About the Fire and Police Commission*, available at <http://city.milwaukee.gov/fpc/About>. Civilian governance of local police departments is discussed further in Point III *infra*.

<sup>ii</sup> *See* City and County of San Francisco Office of Citizen Complaints, *Complaint Process*, available at <http://sfgov.org/occ/complaint-process>; S.F. Police Commission Disciplinary Trial Rules, *supra* at note i; New York City Civilian Complaint Review Board, Administrative Prosecution Unit, *Second Quarter 2014 Report* at 3, available at <http://www.nyc.gov/html/ccrb/downloads/pdf/APU%20Report%202014%20Q2.pdf>

<sup>iii</sup> *See* New York City Department of Investigation, Office of the Inspector General for the NYPD, *Observations on Accountability and Transparency in Ten NYPD Chokehold Cases*, at iii (January 2015). *See also* WNYC Radio, *Police Punishment: CCRB v. NYPD* (noting that of the 175 substantiated civilian complaints in 2012 in which the CCRB recommended formal disciplinary charges, the NYPD sought charges in only 7 of them), available at <http://project.wnyc.org/ccrb/>

<sup>iv</sup> *Floyd v. City of New York*, 959 F.Supp.2d 540, 618-19 (S.D.N.Y. 2013)

<sup>v</sup> *Lynch v. Giuliani*, 301 A.D.2d 351, 357-58 (N.Y. App. Div. 2003) (holding that granting prosecutorial power to CCRB did not violate New York City or State law)

<sup>vi</sup> *See, e.g.*, Los Angeles Police Department Internal Affairs Group, *Report on the Administration of Internal Discipline: A Report on Complaints Closed April 2012*, and Los Angeles Police Department, *Discipline Report for Quarter 2, 2012*, both available at <http://assets.lapdonline.org/assets/pdf/QDR%202nd%20Qtr.%202012%20FINAL%20V2.pdf>;

<sup>vii</sup> *See* D.C. Code § 5-1112(e).

<sup>viii</sup> *See* Samuel Walker, *The New World of Police Accountability*, at 136-42 (2005); Police Assessment Resource Center, *National Guidelines for Police Monitors*, at 15-17 (2008)

<sup>ix</sup> *See* Los Angeles City Charter Art. V § 573; *Accomplishments of the Office of the Inspector General of the Los Angeles Police Department*, available at <http://www.oig.lacity.org/#!/oig-accomplishments/c3z8>; San Jose City Charter § 809; San Jose Mun. Ord. § 8.04.010; Portland City Code §§ 3.21.010 *et seq.*; New Orleans City Charter § 9-401; New Orleans City Code Chap. 2 § 2-1121; N.Y. City Charter Chapter 34 § 803.

<sup>x</sup> *See* Walker, *supra* note viii, at 164.

---

<sup>xi</sup> See Los Angeles City Charter Art. V §§ 571, 575; Los Angeles Police Commission, *The Function and Role of the Board of Police Commissioners*, available at [http://www.lapdonline.org/police\\_commission/content\\_basic\\_view/900](http://www.lapdonline.org/police_commission/content_basic_view/900); San Francisco Police Department, *Police Commission*, available at <http://sf-police.org/index.aspx?page=2572>; City of Milwaukee, *About the Fire and Police Commission*, available at <http://city.milwaukee.gov/fpc/About>

<sup>xii</sup> Los Angeles City Charter, Art. V §§ 571, 573.

<sup>xiii</sup> See Jim Dwyer, Videos Challenge Accounts of Convention Unrest, *The New York Times*, April 12, 2005, available at <http://www.nytimes.com/2005/04/12/nyregion/12video.html>

<sup>xiv</sup> See Statement of Interest of the United States in *Garcia v. Montgomery County, Maryland*, 12-CV-3592, Dkt # 15 (D. Md. March 4, 2013); *Glik v. Cunniffe*, 655 F.3d 78 (1<sup>st</sup> Cir. 2011); *ACLU of Illinois v. Alvarez*, 679 F.3d 583 (7<sup>th</sup> Cir. 2012).

<sup>xv</sup> See, e. g., *Bandelet v. City of New York*, 07 Civ. 3339 (S.D.N.Y.); Brief of Amici Curiae Berkeley CopWatch, Communities United Against Police Brutality (Minneapolis), Justice Committee, Portland CopWatch, Milwaukee Police Accountability Coalition and Nodutdol for Korean Community Development, filed in *Glik v. Cunniffe*, *supra* note xiv, available at [http://ccrjustice.org/files/CCR%20Amicus%20Brief\\_0.pdf](http://ccrjustice.org/files/CCR%20Amicus%20Brief_0.pdf)

<sup>xvi</sup> See Order Establishing Collaborative Procedure, in *Tyehimba v. City of Cincinnati*, No. C-1-99-317, Dkt # 27 (S.D. Ohio May 3, 2001); Collaborative Agreement in *In Re Cincinnati Policing*, No. C-1-99-3170 (S.D. Ohio. 2002), available at <http://www.cincinnati-oh.gov/police/linkservid/27A205F1-69E9-4446-BC18BD146CB73DF2/showMeta/0/>

<sup>xvii</sup> *Floyd v. City of New York*, 959 F.Supp.2d 668 (S.D.N.Y. 2013)

<sup>xviii</sup> Settlement Agreement and Stipulated Order of Resolution in *United States v. City of Seattle*, 12-CV-1282, Dkt # 3-1 § I.B. (W.D. Wash. July 27, 2012); Memorandum of Understanding Between the United States and the City of Seattle, dated July 27, 2012, at § IIIA-C, available at [http://www.justice.gov/crt/about/spl/documents/spd\\_mou\\_7-27-12.pdf](http://www.justice.gov/crt/about/spl/documents/spd_mou_7-27-12.pdf)

President's Task Force on 21st Century Policing  
Office of Community Oriented Policing Services  
U.S. Department of Justice  
Electronically submitted to [PolicingTaskForce@usdoj.gov](mailto:PolicingTaskForce@usdoj.gov)

January 28, 2015

***Written Testimony of Lambda Legal to the President's Task Force on 21<sup>st</sup> Century Policing***

Lambda Legal welcomes the opportunity to submit written testimony to supplement the in-person testimony of Deputy Legal Director Hayley Gorenberg to the Community Oriented Policing Services Listening Session on Policy and Oversight to be convened January 30, 2015. Founded in 1973, Lambda Legal is the oldest and largest national legal organization dedicated to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and people living with HIV through impact litigation, education and public policy work. At any time Lambda Legal has more than 70 high-impact legal matters active around the country, and throughout our four-plus decades, policing issues have loomed large. Lambda Legal's criminal justice work includes *Lawrence v. Texas*,<sup>i</sup> the landmark Supreme Court decision that struck down all remaining sodomy laws in the United States; challenges to police "sting" operations targeting gay and bisexual men<sup>ii</sup>; advocacy to end criminalization of HIV status<sup>iii</sup>; advocacy to end the use of condoms as evidence of prostitution-related crimes<sup>iv</sup>; litigation to address transgender prisoners' access to medical treatment<sup>v</sup> and their safety while in custody<sup>vi</sup>; working to interrupt the "school-to-prison pipeline"<sup>vii</sup>; and a recent national survey of thousands of lesbian, gay, bisexual, transgender, and gender-nonconforming people and people living with HIV, which focused on the communities' experience with the criminal justice system and policing.<sup>viii</sup>

Lambda Legal collaborates widely on criminal justice issues affecting lesbians, gay men, bisexuals, transgender people, gender-nonconforming people, and people living with HIV. LGBT people (lesbians, gay men, bisexuals, transgender people), gender-nonconforming people and people living with HIV, especially those who are also people of color, are particularly vulnerable to police power abuses. People who are LGBT, HIV-positive, of color, or any combination of those personal characteristics, are more likely to bear the brunt of unfair and dangerous policing. The following comments reflect our experience as an organization, as well as our work with sister organizations nationwide.

As highlighted in a report recently published by the NAACP, in addition to experiencing many of the same forms of racial profiling and race and poverty-based discriminatory policing as other members of communities of color, LGBTQ people of color experience gender and sexuality-specific forms of racial profiling and police brutality,<sup>ix</sup> and LGBT people, particularly LGBT youth and people of color, also experience pervasive profiling and discriminatory treatment by local, state and federal law enforcement agents based on actual or perceived sexual orientation, gender, gender identity or expression, and HIV status.<sup>x</sup>

Over the past decade, the National Coalition of Anti-Violence Programs has found law enforcement agents consistently among the top three categories of perpetrators of LGBT-targeted violence reported to anti-violence organizations.<sup>xi</sup> The National Transgender Discrimination Survey conducted by the LGBTQ Task Force and National Center for Transgender Equality found transgender respondents who interacted with police likely to report harassment, as well as physical (including sexual) assault by police officers.<sup>xii</sup> Across the country, LGBT and gender-nonconforming youth are more likely to be stopped by the police and experience greater criminal justice sanctions that do not correlate with any greater involvement in violating the law.<sup>xiii</sup> Investigations of local police departments in New Orleans and Puerto Rico by the U.S. Department of Justice have documented patterns and



practices of discriminatory policing of LGBT people,<sup>xiv</sup> and these findings are consistent with documentation from local organizations, as well as Lambda Legal's case load and our recent national study exploring the issue of misconduct by the police, courts, prisons and school security against LGBT people and people living with HIV.<sup>xv</sup> Many respondents reported that police officers' attitudes toward them had been hostile, and the younger they were, the more likely they were to experience police hostility. More than one in eight respondents reported verbal and physical harassment from police, with the incidence rising for people of color and low-income people. Of respondents who said they had lodged complaints about police misconduct in the last five years, almost three-quarters said their complaints were not fully addressed. Many Lambda Legal respondents also reported that police neglected their reports of assault, and nearly half of African-American, transgender and gender-nonconforming respondents, and more than half of HIV-positive respondents reported police failed to address their reports of intimate partner violence.

These documented patterns and practices, gender- and sexuality-specific profiling and discriminatory policing require specific policy reforms to address the following:

- Anti-LGBT verbal harassment and abuse by law enforcement officers;
- Profiling and discriminatory enforcement of prostitution-related and lewd conduct offenses, including citation of possession or presence of condoms as evidence of intent to engage in prostitution-related or lewd conduct offenses;
- Failure to respect people's gender identity and expression when addressing members of the public, arrest processing, searches, and placement in police custody;
- Sexual harassment and assault by law enforcement officers;
- Police neglect of LGBT crime victim complaints;
- Searches to assign gender, and disproportionately invasive and intrusive searches of transgender and gender-nonconforming (TGNC) people than non-TGNC people;
- Dangerous placement and cruel and degrading treatment in police custody;
- Discriminatory and damaging policing impacts on young people in schools.

## ***RECOMMENDATIONS***

### **I. Passing, effectively implementing, and enforcing LGBT-inclusive anti-profiling measures**

1. We urge the Administration to expand the protections of the Guidance for Federal Law Enforcement Agencies on the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation and Gender Identity issued by the U.S. Department of Justice in December 2014 to reach all federal and federally funded law enforcement activities.
2. The Administration should work with Congress toward the passage of an End Racial Profiling Act in an expanded form that also includes protections against profiling on the basis of gender, sexual orientation, and gender identity.
3. Local law enforcement agencies should be required, as a condition of receipt of federal funding, to adopt, effectively implement, and enforce prohibitions against profiling consistent with the new federal Guidance. State and local profiling bans should incorporate an independent enforcement mechanism accessible to members of the public.
4. The Administration should, consistent with the recommendation of the Presidential Advisory Commission on HIV/AIDS,<sup>xvi</sup> issue and publicize guidance to federal, state and local law

enforcement agencies condemning the reliance on mere possession or presence of condoms as evidence of intent to engage in criminal activity, and encouraging agencies to adopt policies prohibiting this practice. Policing agencies do not have a public health agenda at their core, and are often unmoved by clear evidence of the damage to public health of considering unused condoms as evidence of prostitution-related crimes. Additionally, political attention to the scourge of human trafficking has one unfortunate effect, in that it causes law enforcement leaders to shy away from law and policy reforms that would bar use of condoms as evidence in sex trafficking prosecutions despite the fact that victims of trafficking have raised their concerns that using condoms in this fashion limits the ability of people who are among the most severely abused to take a simple measure that could, even in their circumstances, protect them.<sup>xvii</sup>

## **II. Building Culturally Competent Police Forces**

1. The Administration should seek to ensure that police departments include sexual orientation, gender identity and expression, and HIV status in nondiscrimination policies, guidelines and resolutions. Police departments should also ensure that patrol guides and similar resources explicitly include a commitment to equal and respectful treatment of people who are LGBT, gender-nonconforming, and people living with HIV. These guidelines should specifically explain that police officers will be held accountable for failing to comply. Patrol guides and policy manuals of New York City,<sup>xviii</sup> New Orleans,<sup>xix</sup> and Los Angeles<sup>xx</sup> provide helpful examples.
2. The Administration should seek to ensure that police departments institute systems to identify officers who have engaged in insensitive or abusive behavior and follow up with training and discipline sufficient to end the behavior.
3. The Administration should seek to ensure that police implement mandatory training about HIV for employees at all levels of the department, with content specific to the duties of the personnel being trained. The training should address confidentiality and accurate information about how HIV is transmitted.
4. The Administration should seek to ensure that police departments adopt or amend policies, patrol guides, union contracts, and accountability mechanisms to mandate nondiscrimination and respectful treatment, and to prohibit profiling based on race, gender, national origin, ethnicity, actual or perceived sexual orientation, gender identity and expression, HIV status, disability, religion, immigration status, age and housing status.
5. The Administration should seek to ensure that police departments implement mandatory cultural competency training concerning LGBT and HIV issues, with ongoing community involvement, for all employees. Training should address implicit bias with regard to race; gender; national origin; ethnicity; actual or perceived sexual orientation, gender identity and expression; HIV status; disability; religion; immigration status; age; and housing status.<sup>xxi</sup> Such training should specifically utilize existing police structures, e.g., incorporating training into sessions whose importance is underscored by including them among sessions that require rotating officers from street duty, rather than in brief pre-roll call sessions, and/or incentivizing units through systems that award points toward upcoming exams for successful completion.

### **III. Establishing nationwide standards for treatment of LGBT and gender-nonconforming people in custody**

In the absence of policies prohibiting discrimination based on sexual orientation and gender identity and clear policies governing the determination of gender for the purposes of arrest processing and protection of LGBT people in police custody, LGBT people in police custody all too often experience unlawful, unnecessary and humiliating searches to assign gender, as well as LGBT-targeted discrimination and abuse, and unsafe placement.<sup>xxii</sup> In particular, searches conducted by police officers on the street or in police detention facilities for the purposes of assigning a gender to detainees based on anatomical features—or simply to ogle or humiliate TGNC people are widespread, though unlawful.<sup>xxiii</sup>

1. The Department of Justice should promulgate national standards for local law enforcement agencies relating to placement, searches, and other interactions with LGBT and gender-nonconforming people, consistent with consent decrees entered into with the New Orleans Police Department and the Puerto Rico Police Department, and condition federal funding on adopting these policies.
2. The Department of Justice should amend PREA regulations to include an explicit prohibition on searches in police lock-ups for the purpose of determining genital characteristics.<sup>xxiv</sup>
3. The Administration should seek to ensure that police provide efficient procedures for access to medication, including but not limited to HIV medications and hormone treatments for transgender people, so that medical care is not interrupted in detention.

### **IV. Ending Sexual Harassment and Assault by Law Enforcement Officers**

As documented by Amnesty International, the International Association of Chiefs of Police, the Cato Institute, and independent researchers, and as reflected in Lambda Legal's national survey, sexual harassment and assault by law enforcement officers is pervasive but often undetected, and requires effective policies, training, oversight and disciplinary practices.<sup>xxv</sup> LGBT people, and particularly lesbian and transgender women, are particularly targeted for this gender-specific form of police abuse.<sup>xxvi</sup>

1. Federal law enforcement agencies should adopt policies to prevent, address, and document sexual harassment, abuse, and assault by local law enforcement agents, consistent with recommendations of the International Association of Chiefs of Police.
2. The Department of Justice should clarify that the definition of "lock-ups" contained in the Prison Rape Elimination Act (PREA) regulations includes police cars and other temporary locations of police detention, and should pursue application and enforcement of existing PREA standards for every form of police lock-up.
3. The Department of Justice should initiate new rulemaking pursuant to PREA that would align PREA provisions pertaining to police lockups with those pertaining to adult jails and prisons, including expanding provisions related to access to victim advocates, training and education, and screening for risk of sexual victimization and abusiveness.

### **V. Collecting Information to Promote Safety and Eliminate Risk**

To protect the privacy and dignity of people with whom they come in contact, law enforcement agents should never be charged with mandatory data collection relating to sexual orientation or gender identity during police interactions or while LGBTQ people are in custody. This policy is distinct from

and does not affect voluntary provision of information relating to sexual orientation or gender identity to ensure safer placements in police custody. Questions concerning mistreatment of LGBT and gender-nonconforming people by law enforcement officers should be added to the Bureau of Justice Statistics Police Contact Survey and the Office of Victims of Crime National Intimate Partner and Sexual Violence Survey.

## **VI. Policing Young People in Schools: Interrupting the “School-to-Prison Pipeline”**

The skyrocketing placement of school safety agents tasked from local police departments to schools has diverted school discipline issues from the principal’s office and guidance counselors, to police handcuffs and arrests. Research shows LGBT and gender-nonconforming teens and young adults are disproportionately punished by school and criminal authorities.<sup>xxvii</sup> Data from a nationally representative sample of more than 15,000 people show that lesbian, gay and bisexual adolescents are about 40 percent more likely than other teens to be punished by school authorities, police, and courts. (While this study did not explore the experiences of transgender youth, anecdotal reports suggest that they are similarly at risk for excessive punishment.) These disparities in punishments do not correlate to rates of misbehavior. In fact, the study showed that adolescents who identified themselves as LGB actually engaged in less violence than their peers.<sup>xxviii</sup> The resulting dynamic shunting young people from school to criminal justice systems is known as the “school-to-prison pipeline.”

1. The Administration should seek to ensure that police and schools to limit interventions that push students out of educational environments (including referrals to law enforcement, and school-based arrests) to conduct that poses a serious safety threat to students or staff.
2. The Administration should seek to minimize the involvement of police in schools and ensure that police and schools engage alternative programs when appropriate, including peer mediation, conflict resolution, guidance counseling, peer juries and courts, mentoring, restorative justice practices and parental and community involvement initiatives.
3. The Administration should seek to ensure that police and schools at the district level, to comply with or create a public reporting system for school discipline data, including school-based arrests and referrals to law enforcement, and regularly audit the data and analyze it, with meaningful involvement from community partners, to reduce arrests and police referrals to the greatest degree possible.
4. The Administration should seek to ensure that, if police are to be routinely present in schools, they are integrated into the educational community and used to connect students to community resources, e.g., law enforcement programs to clear warrants for low-level, nonviolent offenses that, when left unaddressed, impair young people’s access to further schooling and employment. As the Vera Institute has noted, police can play a key role in linking youth and families to rehabilitative options instead of resorting to court interventions.<sup>xxix</sup>

Lambda Legal thanks the *Task Force on 21st Century Policing* for creating this opportunity to offer potential policy solutions, and urges continued outreach to LGBT communities as the Task Force continues to listen and collect recommendations.

---

<sup>i</sup> 539 U.S. 558 (2003)

- 
- <sup>ii</sup> E.g., *Calhoun v. Pennington*, No. 1:09-CV-3286 (N.D. Ga., order approving settlement filed Dec. 8, 2010) and *Giles v. City of Johnson* (COA 09-5627, 6<sup>th</sup> Cir., filed Sept. 30, 2008).
- <sup>iii</sup> “World AIDS Day 2014, 15 Ways HIV Criminalization Hurts Us All,” available at [http://www.lambdalegal.org/blog/20141114\\_world-aids-day-2014](http://www.lambdalegal.org/blog/20141114_world-aids-day-2014); “Lambda Legal Calls for Halt to HIV-Based Criminal Prosecutions in Wake of Department of Justice Guidance,” available at [http://www.lambdalegal.org/blog/20140717\\_lambda-legal-calls-for-halt-to-hiv-based-criminal-prosecutions](http://www.lambdalegal.org/blog/20140717_lambda-legal-calls-for-halt-to-hiv-based-criminal-prosecutions); *Rhoades v. State*, 848 N.W.2d 22 (Iowa 2014).
- <sup>iv</sup> Memorandum of Support from Lambda Legal Defense and Education Fund for Bill S.323/A.1008., available at [http://www.lambdalegal.org/sites/default/files/ltr\\_ny\\_20120405\\_condoms-as-evidence\\_0.pdf](http://www.lambdalegal.org/sites/default/files/ltr_ny_20120405_condoms-as-evidence_0.pdf).
- <sup>v</sup> *Fields v. Smith*, 653 F.3d 550 (7th Cir. 2011).
- <sup>vi</sup> *Zollicoffer a/k/a Star v. Livingston*, No. 4:14-cv-03037 (S.D. Tex., Compl. filed Oct. 23, 2014)
- <sup>vii</sup> *Testimony to the U.S. Senate Judiciary Committee on the Constitution, Civil Rights and Human Rights of Ending the School-to-Prison Pipeline* (Dec. 10, 2012), available at [http://www.lambdalegal.org/in-court/legal-docs/leg\\_us\\_20121210\\_testimony-school-to-prison-pipeline](http://www.lambdalegal.org/in-court/legal-docs/leg_us_20121210_testimony-school-to-prison-pipeline)
- <sup>viii</sup> Lambda Legal, *Protected and Served? Survey of LGBT/HIV Contact with Police, Courts, Prisons, and Security* (2014), available at [www.lambdalegal.org/protectedandserved](http://www.lambdalegal.org/protectedandserved).
- <sup>ix</sup> National Association for the Advancement of Colored People, *Born Suspect: Stop-and-Frisk Abuses & the Continued Fight to End Racial Profiling in America* (2014), available at [http://action.naacp.org/page/-/Criminal%20Justice/Born\\_Suspect\\_Report\\_final\\_web.pdf](http://action.naacp.org/page/-/Criminal%20Justice/Born_Suspect_Report_final_web.pdf)
- <sup>x</sup> Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, *Queer (In)Justice: The Criminalization of LGBT People in the United States* (Boston: Beacon Press, 2011); Kathryn E. W. Himmelstein and Hannah Brückner, “Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study,” *Pediatrics* 127 (1) (2011): 49-57 (LGB youth more likely to be stopped by the police and experience greater criminal justice sanctions not explained by greater involvement in violating the law or engaging in transgressive behavior); Brett G. Stoudt, Michelle Fine, and Madeline Fox, *Growing Up Policed in the Age of Aggressive Policing Policies*, 56 N.Y.L. Sch. L. Rev. 1331 (2011) (LGB youth are more likely to experience negative verbal, physical, and legal contact with the police, and more than twice as likely to experience negative sexual contact in preceding six months); Amnesty International, *Stonewalled: Police Abuse and Misconduct Against LGBT People in the United States* (Washington: Amnesty International, 2005), available at <http://www.amnesty.org/en/library/asset/AMR51/122/2005/en/2200113d-d4bd-11dd-8a23-d58a49c0d652/amr511222005en.pdf>.
- <sup>xi</sup> National Coalition of Anti-Violence Programs, *Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities in the United States in 2010*, (New York: National Coalition of Anti-Violence Programs, 2011), available at [http://www.avp.org/storage/documents/Reports/2011\\_NCAVP\\_HV\\_Reports.pdf](http://www.avp.org/storage/documents/Reports/2011_NCAVP_HV_Reports.pdf).
- <sup>xii</sup> Jaime M. Grant, Lisa A. Mottet, and Justin Tanis, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), available at [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf).
- <sup>xiii</sup> Himmelstein, *supra* note x.
- <sup>xiv</sup> U.S. Department of Justice, Civil Rights Division, *Investigation of the New Orleans Police Department*, March 16, 2011; U.S Department of Justice, Civil Rights Division, *Investigation of the Puerto Rico Police Department*, September 5, 2011. See also, *A Roadmap for Change: Federal Policy*

---

*Recommendations to Address Criminalization of LGBT People and People Living With HIV*, available at <http://web.law.columbia.edu/gender-sexuality/roadmap-change>.

<sup>xv</sup> Lambda Legal, *Protected and Served? Survey of LGBT/HIV Contact with Police, Courts, Prisons, and Security* (2014), available at [www.lambdalegal.org/protectedandserved](http://www.lambdalegal.org/protectedandserved).

<sup>xvi</sup> Presidential Advisory Council on HIV/AIDS. *Resolution on ending federal and state HIV-specific criminal laws, prosecutions, and civil commitments*, available at <http://aids.gov/federal-resources/pacha/meetings/2013/feb-2013-criminalization-resolution.pdf>.

<sup>xvii</sup> Human Rights Watch, *Sex Workers at Risk: Condoms as Evidence of Prostitution in Four U.S. Cities* (2012) available at [http://www.hrw.org/sites/default/files/reports/us0712ForUpload\\_1.pdf](http://www.hrw.org/sites/default/files/reports/us0712ForUpload_1.pdf); Acacia Shields, *Criminalizing Condoms: How Policing Practices Put Sex Workers at IV Services at Risk in Kenya, Namibia, Russia, South Africa, the United States, and Zimbabwe* (New York: Open Society Foundations, 2012), available at <http://www.opensocietyfoundations.org/reports/criminalizing-condoms>; PROS Network and Leigh Tomppert, *Public Health Crisis: The Impact of Using Condoms as Evidence of Prostitution in New York City*, (New York: PROS Network and Sex Workers Project, 2012), available at <http://sexworkersproject.org/downloads/2012/20120417-public-health-crisis.pdf>; Florrie Burke (founder of national Freedom Network and recipient of the inaugural Presidential Award for Extraordinary Efforts to Combat Trafficking in Persons from President Barack Obama), *Forced Into Prostitution and Denied a Lifeline*, Huffington Post May 15, 2013, available at [http://www.huffingtonpost.com/florrie-burke/forced-into-prostitution-\\_b\\_3279937.html](http://www.huffingtonpost.com/florrie-burke/forced-into-prostitution-_b_3279937.html); Lambda Legal et al., *Human Rights Abuses Related to the Criminalization and Incarceration of LGBT People and People Living with HIV in the United States*, submission to the United Nations Universal Periodic Review of the United States of America (May 2015), [http://www.lambdalegal.org/sites/default/files/us\\_20150915\\_upr-contribution.pdf](http://www.lambdalegal.org/sites/default/files/us_20150915_upr-contribution.pdf); Memorandum of Support from Lambda Legal Defense and Education Fund for Bill S.323/A.1008., available at [http://www.lambdalegal.org/sites/default/files/ltr\\_ny\\_20120405\\_condoms-as-evidence\\_0.pdf](http://www.lambdalegal.org/sites/default/files/ltr_ny_20120405_condoms-as-evidence_0.pdf) (citing Centers for Disease Control and Prevention, *Condoms and STDs: Fact Sheet for Public Health Personal* (2011); Coalition Memos of Support for Bill S.323/A.1008, available at <http://www.nocondomsasevidence.org/memos-of-support/>; Urban Justice Center, *Memorandum in Support*, available at <http://www.nocondomsasevidence.org/wp-content/uploads/2012/04/20110303-swp-a1008-memo-in-support.pdf>.

<sup>xviii</sup> Communities United for Police Reform, *Community Safety Act*, available at <http://changethenypd.org/community-safety-act>.

<sup>xix</sup> *New Orleans Police Department Issues LGBTQ Policy on Anniversary of Historic Stonewall Riots Against Police Brutality* (June 29, 2013), available at <http://www.youthbreakout.org/content/new-orleans-police-department-issues-lgbtq-policy-anniversary-historic-stonewall-riots>

<sup>xx</sup> 2014 1<sup>st</sup> Quarter Manual, Los Angeles Police Department, available at [http://www.lapdonline.org/lapd\\_manual/](http://www.lapdonline.org/lapd_manual/).

<sup>xxi</sup> Researcher shows human brains are, to a large extent, “designed to be biased,” largely towards those with whom they are most familiar. See, e.g., Shankar Vedantam, *The Hidden Brain*, Ch. 4 (“The Infant’s Stare: The Life Cycle of Bias”) (Spiegel & Grau) (2010). Though there may be an evolutionary utility to that bias, when a police officer has a gun in hand, training to inform and counter bias becomes a matter of life and death – particularly for people on the outskirts of an officer’s familiarity. So color, sexual orientation, gender identity and other distinguishing characteristics require interventions if police who don’t share those characteristics are to protect and serve our communities. Untrained police power exercised without accountability leaves us less safe, and particularly endangers segments of our

---

communities already on the periphery of power. For these reasons, diversity of police forces and training – in addition to legal mandates – potentially become issues of life and death.

<sup>xxii</sup> National Prison Rape Elimination Commission, “National Prison Rape Elimination Commission Report” (2011), available at [http://static.nicic.gov/UserShared/2013-03-29\\_nprec\\_finalreport.pdf](http://static.nicic.gov/UserShared/2013-03-29_nprec_finalreport.pdf); Mogul et al., *supra* note x; Amnesty International, *supra* note x.

<sup>xxiii</sup> Amnesty International, *supra* note x; Alex Coolman, Lamar Glover, and Kara Gotsch, *Still in Danger: The Ongoing Threat of Sexual Violence against Transgender Prisoners* (Los Angeles and Washington: Stop Prisoner Rape and ACLU National Prison Project, 2005), available at <http://www.justdetention.org/pdf/stillindanger.pdf>.

<sup>xxiv</sup> Invasive and degrading genital searches conducted by law enforcement as “gender checks” are unfortunately commonplace. Amnesty International, *supra* at note x. The current language in PREA, which prohibits such searches “unless part of a broader medical examination” leaves too much discretion as to what constitutes a “broader medical examination,” given the ongoing problem of harassing and assaultive genital searching of LGBT detainees.

<sup>xxv</sup> Stinson, Philip M.; Liederbach, John; Brewer, Steven L.; and Mathna, Brooke E., *Police sexual misconduct: A national scale study of arrested officers* (2014), Criminal Justice Faculty Publications. Paper 30, [http://scholarworks.bgsu.edu/crim\\_just\\_pub/30](http://scholarworks.bgsu.edu/crim_just_pub/30); International Association of Chiefs of Police, *Addressing Sexual Offenses and Misconduct by Law Enforcement Officers: An Executive Guide* (Virginia: International Association of Chiefs of Police, 2011), available at <http://www.theiacp.org/Portals/0/pdfs/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf>; Cato Institute, *National Police Misconduct Reporting Project Annual Report (2010)*, available at: <http://www.policemisconduct.net/statistics/2010-annual-report>; Samuel Walker and Dawn Irlbeck, *Driving While Female*, Police Professionalism Initiative, University of Omaha (2012), available at <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2002.pdf>.

<sup>xxvi</sup> Amnesty International, *supra* note x; see also National LGBTQ Task Force, *supra* note x.

<sup>xxvii</sup> Kathryn E. W. Himmelstein & Hannah Brückner, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, 127 *Pediatrics* 49, 49-57 (2010).

<sup>xxviii</sup> Karen N. Peart, *Lesbian, Gay and Bisexual Teens Singled Out for Punishment*, Yale News (Dec. 6, 2010) <http://news.yale.edu/2010/12/06/lesbian-gay-and-bisexual-teens-singled-out-punishment>.

<sup>xxix</sup> <http://www.vera.org/sites/default/files/resources/downloads/nick-turner-testimony-presidents-task-force-21st-century-policing.pdf>.



CHUCK CANTERBURY  
NATIONAL PRESIDENT

NATIONAL  
FRATERNAL ORDER OF POLICE ®

---

328 MASSACHUSETTS AVE., N.E.  
WASHINGTON, DC 20002  
PHONE 202-547-8189 • FAX 615-202-547-8190

JAMES O. PASCO, JR.  
EXECUTIVE DIRECTOR

TESTIMONY  
  
of  
  
Kathleen Harrell  
  
President,  
  
Queen City Lodge #69, Ohio State Lodge  
Fraternal Order of Police  
  
on  
  
"Policy and Oversight"  
  
before the  
  
President's Task Force on 21st Century Policing

30 January 2015



Good morning Commissioner Ramsey, Ms. Robinson and distinguished members of the President's Task Force on 21st Century Policing. I am very pleased to be able to be here with you today to share my experiences with my department and my community during my time as the President of Queen City Lodge #69, representing more than a thousand officers right here in Cincinnati.

In December 2002, the city of Cincinnati, the U.S. Department of Justice, the local FOP, the Ohio ACLU and the Cincinnati Black United Front entered into a Federal collaborative agreement. For the next six years, the "collaborative" as we called it, did a lot of hard work to change the culture of law enforcement in Cincinnati and the image of law enforcement in our great city. Community leaders that spent years bringing lawsuits against our officers became some of our most important allies and the FOP, in turn, took up their goals and objectives as our own.

So how did this happen? From the very start, the Monitor Team and the FOP viewed the situation as unique-a real opportunity to show that law enforcement and the community could come together without resorting to a consent decree and resolve our problems by changing the way we approach policing in our city.

The Independent Monitor's Final Report, which I recommend the Task Force review, explains the unique foundation of collaboration and the challenges of working under both the collaborative agreement and a Memorandum of Agreement (MOA). I am proud to have been a part of our ultimate success.

Let me first underscore the depth of the FOP's commitment to this process. We held a meeting early on and our membership approved our involvement in this effort and the use of their dues to make sure we could have a representative at the table as the collaborative and MOA took shape. We could have adopted, as our police administrators did at first, a passive role and waited for the results and recommendations to be produced. Instead, we put our money where our mouth is and made sure that we would be an active part of this effort.

At the first Listening Session of the Task Force, our National President Chuck Canterbury said we needed a holistic approach to the issues we've been discussing here today because they are not law enforcement's alone. He also said law enforcement should take the

lead. That is exactly what happened in our city and I believe the collaborative to be a resounding success.

Shortly after my election, I made sure to become a very active participant in the activities of the collaborative. I was the first union president to attend the "all party" meetings with the Federal monitors, mayor's office staff, ACLU and Black United Front. There was no question in the mind of anyone in the collaborative that the FOP was committed to the objectives spelled out by the two agreements. In fact, I am pleased that the FOP was on the front line advocating for a lot of the changes and recommendations to our own members, the mayor's office and the department administrators.

And do you know what happened? The shared goals and the obvious commitment that all of us had to changing the culture and the image of law enforcement in Cincinnati helped establish trust and confidence in one another. We developed mutual respect and admiration because we realized that all of us around that table had the same goal in mind: a better, safer city where ALL of our citizens felt welcome and secure.

The impact of the collaborative, while important, was only the tip of the iceberg. The relationships developed among the FOP, ACLU, Black United Front and other community groups, especially the leaders in our faith community, continue to show how deeply and powerfully we can change our communities if we work together.

In 2009, when our department faced a series of layoffs and reduction in staffing levels, our partners in the collaborative joined us in protesting the decisions to city hall. They helped campaign against the lay off proposals. It is hard to imagine that the groups that spent years suing the department now joined with the rank-and-file to keep officers where they wanted them-in the neighborhoods, protecting their homes.

Later, the then-President of the local NAACP, Christopher Smitherman, sought and won a seat on the city council. He did so with the enthusiastic support and endorsement of the FOP. Now, he is chairman of the Law and Public Safety Committee and one of the most stalwart champions of the rank-and-file officer on the council. He understands the commitment law enforcement has to our city and shares it-just as we knew he would.

During the FOP's effort to turn back Senate Bill 5 which stripped law enforcement and other public employees of many of our collective bargaining rights, our friends from the collaborative were active participants in the referendum effort to overturn the law. With support from nearly 62% of voters, we succeeded.

Having been an active part of this effort, I don't think Cincinnati is necessarily unique. I believe that if law enforcement and the community can get together, get around that table and work through the acrimony and distrust, you can replace it with mutual respect. We all acknowledged that we could do a better job at policing our city. The community leaders came to understand our commitment to the public and their safety just as we grew to understand their commitment to a safer city for all citizens. Once you have a mutual goal and trust in all of your partners, you can achieve whatever you set out to do. Over the course of six years, we did a lot of work together, but, in a sense, the hardest work was done in those early months as we put an end to the mistrust among us.

I am glad to have had the opportunity to discuss my experiences and those of the local FOP with this Task Force. I once again recommend you review the Federal Monitor's Final Report which documents the success we had here in Cincinnati.

I would now be happy to answer any of your questions.

Law enforcement officers need to continuously train for pre-planned and spontaneous events where large crowds gather [1]. Large crowds can become unruly and riots can ensue if law enforcement officers are not trained properly in crowd control tactics and techniques [2]. In June of 2011, the City of Chicago was notified that it would have the honor of hosting the North Atlantic Treaty Organization (NATO) Summit in May of 2012. I tasked the Chicago Police Department with developing a training program that would provide training for all members of the Chicago Police Department. This task involved creating curriculum and training for over 12,000 members of my Department in eight months. I stressed that crowd control training would increase officer confidence in their crowd control tactics and that effective crowd control training and officer professionalism would increase public trust in the Chicago Police Department.

The training topics covered in preparation for the NATO Summit were the history of civil disorder, legal perspectives, team tactics, demonstrator tactics, crowd dynamics, personal protective equipment, riot control agents, less-lethal munitions, shield and baton training, the use of force, the long range acoustic device (LRAD), suspicious package response, mass arrest, flex cuffing, medical and rescue training, field force extrication, and scenario based training concerning the use of crowd control formations. In addition to classroom and hands-on training, I directed the Chicago Police Department to develop training bulletins, eLearning modules, and streaming videos concerning crowd control-related topics [3].

There were four pivotal points of the crowd control training leading up to the NATO Summit that I would like to emphasize.

The first is recognizing, understanding, and granting the citizens of Chicago and all visitors to the city their First and Fourth Amendment rights. The First Amendment of the United States Constitution grants citizens the right to assemble, communicate ideas, and share problems and desires. The Fourth Amendment gives people the right to be secure in their persons and that unreasonable searches and seizures will not be tolerated. It is important to recognize and understand these rights, then react to crowd situations accordingly. Any unjust denial of these basic rights can give rise to feelings of frustration.

The second is using the appropriate and reasonable amount of force. Police officers need to use an amount of force reasonably necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect themselves or others from injury. Police officers need to employ the progressive and reasonable escalation and de-escalation of officer applied force in proportional response to the actions and level of resistance offered by a subject. Prior to the NATO Summit, I changed the Chicago Police Department policy concerning the use of the Long Range Acoustic Device (LRAD) and Oleoresin Capsicum (OC) in order to ensure that any force used remained reasonable. Our policy now states that the use of the LRAD as a pain control device on crowds or OC on crowds is prohibited unless the Superintendent or my designee authorizes its use. Additionally, although the Chicago Police Department may have military equipment such as rifles and Mine Resistant Ambush Protected (MRAP) vehicles, we would only use it when reasonable and necessary. There is no reason to escalate a peaceful situation with the presence of military equipment.

Third, the team concept was instilled into the training courses because working as a team builds confidence and reinforces proper reaction. It was continuously reinforced that the key to successful team tactic operations were in the creation of a well-disciplined, professional, and controlled working team. Professional is paramount during protest situations and police officers cannot let the heat of the protest or the circumstances dictate their actions [3]. I told my officers to always remain professional, impartial, unbiased, and objective.

The fourth point is that strong leadership must be provided from all supervisors. This on-the-ground leadership lends itself to more timely and accurate decisions, as well as flexibility in responding to situations. Supervisors need to ensure that their subordinate's needs are met and that information is communicated freely in order to establish effectiveness. Additionally, supervisors were instructed that they would be held accountable for the conduct and appearance of all on-duty subordinate personnel.

Now, in addition to training members of our own Department for the NATO Summit, we conducted joint police and fire training exercises and instructed courses for outside agencies in order to prepare for the NATO Summit. The outside agencies that we instructed were the Chicago Fire Department, Chicago Traffic Management Authority (TMA), City of Chicago Inspectors, and the Independent Police Review Authority (IPRA), which is our civilian oversight agency.

Lastly, I guided the Chicago Police Department to conduct Command Staff tabletop exercises. The purpose of the Command Staff tabletop exercises were to:

- Prepare to respond to crowd control situations
- Test plans, critical response, and recovery functions
- Challenge systems and procedures
- Identify gaps and shortfalls

The objectives of the Command Staff tabletop exercises were to assess and validate our capabilities and roles in the following:

- Communications
- Critical resource logistics and distribution
- Mass care (sheltering, feeding, and related services)
- Medical needs
- Crowd Control

Due to the quality and abundance of training that the Chicago Police Department members and outside agencies received from the Chicago Police Department, all of the Chicago Police officers and outside agencies worked well together as a disciplined team during the NATO Summit. The front line officers displayed their patience and restraint, which visibly frustrated some protesters who tried to illicit an excessive response. During some skirmishes with violent demonstrators, where bottles, rocks, and other objects were thrown at the police, the police officers made arrests quickly and efficiently. Additionally, when aggressive groups of protesters charged police formations, the police lines proved to be impenetrable [4].



Once the NATO Summit left Chicago in 2012, I directed our training academy to develop a procedural justice and legitimacy training program. Procedural justice is the process used by police officers where citizens are treated fairly and with proper respect. The police gain acceptance when they are viewed by the public as fairly distributing police services across people and communities [5]. Legitimacy refers to when a citizen feels that a police officer should be deferred to, complied with, and trusted. It has been stated that positive citizen experiences lead to positive evaluations of the police [6]. The Chicago Police Department's training focuses on four core principles of Procedural Justice and Legitimacy, which are:

1. Giving others a Voice (Listening);
2. Neutrality in decision making;
3. Respectful treatment; and
4. Trustworthiness.

My entire Department has received Procedural Justice and Legitimacy training and now we are moving into a second phase of the training. Procedural justice and legitimacy in law enforcement is not just a strategy, but a movement. By fostering an environment where procedural justice principles become standard practice, police departments can create an organizational culture that fosters a true partnership with the public and leads to safer work environments. It is about doing the right thing all of the time and treating others how you would want to be treated [7].

In concert with the Procedural Justice training, the Chicago Police Department continues to conduct crowd control sustainment training in order to keep the officers' knowledge and skills fresh. The Chicago Police Department crowd control teams need sustainment/refresher training in crowd control tactics and techniques in order to keep the citizens of the city safe, the businesses of the city operational and undamaged, the police officers uninjured, and to uphold civil liberties.

There continue to be protests on a regular basis in Chicago that concern a wide array of topics. There are usually minimal arrests, most protests remain peaceful, and the police officers serve the city of Chicago with honor, pride, professionalism, integrity, courage, and excellence. Due to the crowd control training that my officers receive continually, the procedural justice and legitimacy culture within our Department, and the leadership of the Department being held accountable for effective results, the Chicago Police Department continues to strengthen its bond with our community. Chicago Police Department members serve the community, but are also members of the same community that they serve. By doing all of the right things during mass demonstrations, Chicago Police officers keep building positive and trusting relationships among all that they serve.

## REFERENCES

- [1] Daigle, E. (Summer 2013). Crowd management and protecting civil rights. *The tactical edge magazine*. Doylestown, PA: National Tactical Officers Association.
- [2] U.S. Department of Homeland Security. (2007). *Field force operations*. Anniston, AL: Center for Domestic Preparedness.

[3] Lodding, H. & Sedevic, M. (September 2012). Training for the NATO Summit: The Chicago model. *The Police Chief*, 79(9), 46-48.

[4] Marcou, D. (May 28, 2012). *The NATO Conference: A job well done!*, policeone.com, Retrieved from <http://www.policeone.com/Crowd-Control/articles/5641946-The-NATO-Conference-A-job-well-done/>

[5] Sunshine, J. & Tyler, T. R., The role of procedural justice and legitimacy in shaping public support for policing, *Law and Society Review*, 37(3), 513-548, 2003.

[6] Meares, T. L., The Legitimacy of Police Among Young African-American Men, Yale Faculty Scholarship Series, Paper 528, 2009, [http://digitalcommons.law.yale.edu/fss\\_papers/528](http://digitalcommons.law.yale.edu/fss_papers/528) (accessed Jan 28, 2013).

[7] Sedevic, M. T. (September 2013). Procedural Justice and Police Legitimacy Training in Chicago: Reaping the Benefits of the Golden Rule. *9-1-1 Magazine*. Retrieved from <http://www.9-1-1magazine.com/Sedevic-Procedural-Justice-Training>.



NATIONAL  
FRATERNAL ORDER OF POLICE ®

---

328 MASSACHUSETTS AVE., N.E.  
WASHINGTON, DC 20002  
PHONE 202-547-8189 - FAX 615-202-547-8190

CHUCK CANTERBURY  
NATIONAL PRESIDENT

JAMES O. PASCO, JR.  
EXECUTIVE DIRECTOR

TESTIMONY  
  
of  
  
Jay McDonald  
  
President,  
  
Ohio State Lodge, Fraternal Order of Police  
  
on  
  
"Policy and Oversight"  
  
before the  
President's Task Force on 21st Century Policing

30 January 2015

Good morning Commissioner Ramsey, Ms. Robinson and distinguished members of the President's Task Force on 21st Century Policing. Thank you for allowing me to be here today to share with you the perspective of the rank-and-file officers. I am the President of the Ohio State Lodge of the Fraternal Order of Police and have the honor to represent more than 25,000 officers of every rank in this State.

Today I would like to talk about the use of force from the perspective of the rank-and-file officer who is governed in its use by the *Graham* standard. The *Graham* standard provides that an officer should apply constitutionally appropriate levels of force to control resistive or aggressive behavior toward involved personnel, other personnel, third parties, or property. The level of force in response to a given situation must be "reasonable."

Reasonable, of course, is a subjective term but in the *Graham* decision, then-Chief Justice William H. Rehnquist makes it clear:

*The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments- in*

*circumstances that are tense, uncertain and rapidly evolving-about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application.*

I think it's important to reiterate that we must interpret reasonableness from the perspective of the officer and the information he had at the moment the decision to use force was made. We cannot judge the reasonableness of an officer's actions with information collected after the fact that was not known to the officer at the time. This is one of the FOP's concerns about surveillance cameras, body-worn cameras and other electronic images recorded of the events. An article published in *PoliceOne.com*, entitled "10 limitations of body cams you need to know for your protection," gives the reader an excellent overview of the limitations of this technology in reviewing use of force situations. I have attached this article to my testimony and would also urge the Task Force to review the many instructive articles and reports made available by the Force Science Institute. The Institute, which also provides training and certifications for law enforcement, is a tremendous resource.

In addition, I want to make clear that the FOP does not oppose the use of body-worn cameras or other similar technology, provided that appropriate administration and oversight is in place to ensure evidentiary integrity and the protection citizen and officer rights. In fact, we have developed a "best practices" document along with a slide presentation and one hour webinar that is available on our website, *www.fop.net*. I have submitted these materials as part of my testimony today.

Given the holding in *Graham*, the next key step is to appropriately train your officer as to what "reasonable" means in the proper and constitutional application of force in response to a given situation. Before the officer can be properly trained, however, there needs to be an agreement on a use of force continuum. How do we define, in terms of policy and in a very general way, the different types or levels of force at the officer's lawful disposal? The Columbus Police Department's Directive defines 8 levels of force:

- Level 0: Officer presence, verbal and non-verbal commands, searching, handcuffing, sparking a taser for compliance, using flashbangs and multiple baton rounds as diversions;

- Level 1: Empty hand control, pressure points, grounding techniques, and joint manipulations;
- Level 2: Use of chemical spray;
- Level 3: Use of electronic device (electric custody belt or taser);
- Level 4: Hard empty hand control (strike/punch/kick)
- Level 5: Use of impact weapon (baton/flashlight)
- Level 6: Police K-9 bite
- Level 7: Less lethal weapons (beanbag/multiple baton rounds/stinger cartridges)
- Level 8: Deadly force

These levels define the use of force continuum for Columbus police officers and it comports, generally, with most law enforcement agencies. Officers are trained to apply them appropriately to meet

the threats and needs of a given situation and they provide a guide for the officer's decision-making when situations deteriorate or there is a need to respond to an escalation of resistance or threat to the public or the officer.

Resistance to direction or arrest does not mean an officer should desist or refrain from an enforcement act. Agency policy should be clear as to what and how much force is considered reasonable based, albeit generally, on the situation. Again, using the Columbus Police Department as an example, there are four factors to consider prior to engaging in the use of force and at what level:

- the severity of the crime at issue;
- whether the suspect poses an immediate threat to the safety of the officer or others;
- whether the suspect is actively resisting arrest; and
- whether the suspect is attempting to evade arrest by flight.



Given the general guidelines on factors to consider and the levels of force, we are still relying on the officer's judgement of the situation and the threat *as he sees it*. The officer's judgement and his subsequent reaction must be governed by the training he receives, which makes proper training and continued training absolutely vital.

In conclusion, I want to emphasize two points. The first is that we recruit, hire and train men and women knowing that we must be able to rely on their judgement in the field. When they put on the uniform, badge and gun, they are empowered to exercise their police powers in the course of performing their sworn duty. Of all the characteristics we look for in our officers, the most critical is their judgement.

The second most important point I would like to emphasize is that we should not allow technology to replace an officer's judgement. Technology is a tremendous asset to law enforcement and to investigators. Internal reviews of use of force incidents have been greatly improved because we often have dash cam footage,

surveillance camera tapes or other electronic means to analyze and evaluate the actions of all parties when it comes to a use of force incident. But we should not allow this type of technology to affect the judgement of the officer who, with his own two eyes and ears is in that exact moment facing that exact threat, must make a split second life or death decision.

We do not want our officers, even for a second, to think: "How will this look on camera?" Hesitation can mean death or serious injury to the officer or others.

Thank you for having me here today and I would be pleased to answer any questions you might have.



**NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.**

*Representing America's Finest*

317 South Patrick Street. ~ Alexandria, Virginia ~ 22314-3501

(703) 549-0775 ~ (800) 322-NAPO ~ Fax: (703) 684-0515

[www.napo.org](http://www.napo.org) ~ Email: [info@napo.org](mailto:info@napo.org)

## **Testimony of Michael McHale**

**President, National Association of Police  
Organizations**

**Vice President, Florida Police Benevolent  
Association**

**“Policy & Oversight Listening Session”  
President’s Task Force on 21<sup>st</sup> Century Policing**

**University of Cincinnati**

**January 30, 2015 10:00am**

**Commissioner Ramsey, Professor Robinson, and members of the Task Force on 21<sup>st</sup> Century Policing, thank you for inviting me to speak today at the second public listening session. My name is Michael McHale. I am an active duty K-9 Sergeant with the Sarasota Police Department. I also serve as the President of the National Association of Police Organizations, NAPO. I am here today to testify on behalf of NAPO's members.**

**NAPO represents over 241,000 sworn law enforcement officers from across the country. These officers work tirelessly to keep our communities safe. We urge the Task Force to strongly consider the views of our members, rank-and-file police officers, who have firsthand knowledge of the issues that are being considered. Moreover, our members have the greatest stake in the outcomes of the Task Force, both as public safety officers who are responsible for carrying out the law, and as citizens of communities that will be impacted by new policies on public safety.**

**I have been asked to use my allotted time to discuss our views on “use of force” policies. To frame this issue, it must be noted that another layer of risk has been added to an already dangerous job. Individuals are increasingly**

willing to harm law enforcement officers. Social media and news outlets have perpetuated an environment of extreme hostility in communities across our nation. Pundits continue to mischaracterize law enforcement as agitators and harassers, when the fact is that police officers chose a career to serve their communities and protect our citizens. The inflammatory rhetoric culminated in murder just months ago, when two of our member officers, New York City Police Department Officers Wenjian Liu and Rafael Ramos, were deliberately assassinated in the line of duty.

Even in this environment, our officers continue to work each day to protect communities across the nation.

As an officer and as the voice of hundreds of thousands of officers, I can adamantly say that no officer wants to use force while on duty. It is the police who try to save lives and protect people from injury. The officer does not want to hurt the suspect; the officer wants to stop the crime.

That being said, officers are trained to use force, if necessary, not only to enforce the law, but to defend themselves and protect other citizens in

**dangerous situations. For these reasons, Federal and state laws recognize an officer's right to use force.**

**Officers spend many weeks training on how to properly use force to protect themselves and others. During this training, officers are taught that the person who comes into contact with the officer controls the level of force. That person controls the escalation or cessation of force, not the officer.**

**We fully understand and support investigations of officers who must resort to the use of deadly force to protect themselves and their communities. However, we believe it is only right that the officer be investigated by someone who is unbiased and not subject to political pressures. The investigator should have an understanding of an officer's duties, and be absolutely impartial throughout an investigation.**

**There have been proposals at the state level to require an outside entity, from a different jurisdiction, to investigate an officer's use of force, barring the officer's own agency from investigating the incident. In some instances, this could be beneficial. Some law enforcement agencies are too small or do not have enough experienced investigators to conduct such an investigation.**

However, any investigation of an officer's use of force must include an evaluation of the officer's knowledge and beliefs. This is a Constitutional standard recognized by the U.S. Supreme Court in *Graham v. Connor*, not a local standard. The Supreme Court has ruled that the most important factor to consider in evaluating use of force incidents is the threat reasonably believed to be faced by the officer at the time of the incident. Therefore, utilizing an outside agency, or relying on "special" prosecutors with little or no experience of the actual circumstances and locations involved risks depriving the investigation of those significant facts which only the local agency may know.

Building on this, we are concerned with the trend of calling on outside entities to intervene on "use of force" cases when the public disagrees with a decision on an officer's use of force. The recent case in Ferguson, Missouri is a prime example of this issue. The investigation involved many parties, including the local police department, the State Police, the St. Louis County Police Department, the Governor's Office, the Prosecuting Attorney, the Department of Justice, the United States Attorney's Office, the local grand jury, the federal Civil Rights Division and the Federal Bureau of

**Investigation. After a thorough investigation, involving all of the aforementioned parties, the Grand Jury concluded that no criminal action took place. But, many deemed that this was not enough, and demanded another level of investigation. We strongly believe that it would be a mistake to add yet another level of bureaucracy based on political considerations whenever one part of the public disagrees with a legally correct and unbiased decision.**

**These concerns must be considered when making decisions to set up a special prosecutor's office. Individuals running this office will be under a great deal of pressure to justify their work. There is a risk that decisions to prosecute will be made based on politics, not on the law and admissible evidence. We fear that an officer will be indicted, even if he or she did nothing wrong, in a special prosecutor's effort to deliver on the demands placed by the public and those who put him or her in that position.**

**Again, we feel that police officers continue to be unfairly and inaccurately portrayed, which has led to dangerous misconceptions about their work.**



**We expect our officers to offer every citizen respect, dignity, compassion, and fairness. Officers are expected to enforce the law strictly based on the law, not based on politics, gender, or race. This is a standard that we expect from all of our officers, and a standard that our officers uphold. We strongly feel that they should receive this same treatment when they are being investigated.**

**Officers are often times forced to make difficult decisions to protect themselves and their communities. These brave men and women must know that they will be supported when they make the right decision. It is absolutely critical that officers know they will be treated fairly during “use of force” investigations. And officers’ rights must be honored, just as officers continue to respect and honor fellow citizens.**

**In light of these facts, we have several recommendations that we urge you to strongly consider. First, we must work together to better educate the public about the role and rights of police officers in enforcing the law, including the right to defend themselves and innocent bystanders. A lack of understanding of law enforcement officers’ responsibilities has perpetuated an environment of mistrust and unease in communities across the nation.**

**Second, it is vital that political leaders publicly support grand jurors and other public officials when they make correct, but unpopular decisions, applying the law to the evidence. Our leaders' lack of support of fair decisions, made by multiple, unbiased parties, has led our communities to lose faith in a process that works. A lack of support from our leaders will fray the trust that our law enforcement officers continue to work to build.**

**Finally, as our officers work to engage citizens through community policing efforts, we feel that it would be beneficial to encourage citizens to go on ride-alongs, participate in civilian police academies, try shoot/don't shoot simulators, and explore other opportunities to increase their understanding of law enforcement's mission. These interactions will allow citizens the opportunity to understand a police officer's duties and ultimate goal of keeping our communities safe.**

**I appreciate the opportunity to convey these thoughts to you, and hope you will consider our perspective moving forward. I look forward to answering your questions.**

### Written Testimony for Chief Harold E. Medlock

Harold E. Medlock was appointed Chief of Police in February of 2013 for the North Carolina Fayetteville Police Department. He served as Deputy Chief of Police for Charlotte-Mecklenburg Police Department with more than 20 years of law enforcement experience. He also served as National Special Security Event (NSSE) Co-chair overseeing twenty-one NSSE local, state, and federal public safety organization sub-committees charged with producing the NSSE operations plan. Chief Medlock received his bachelor degree in Criminal Justice from Pfeiffer University and decided to further his education and obtained his MBA in 2002. He is a graduate of the FBI National Academy, the National Executive Institute and the Senior Management Institute for Police.

On behalf of the Fayetteville Police Department, I appreciate the opportunity offered by the President's Task Force for the invitation to provide my testimony and values on future improvements for all local law enforcement agencies.

#### Building a Culture on Transparency and Community Engagement and Dialogue

##### Enhancing Communication

I've realized that Fayetteville could have experienced an event similar to the one that occurred in Ferguson, Missouri. As a Police Chief, I'm aware of the impact cultural transparency and community engagement has on the relationship between citizens and law enforcement. It appears the Ferguson Police Department's response to the tragedy brought to light disparities between our communities and police departments. Additional incidents can be avoided if police departments use this incident as a learning tool, and a prevention measure. One could speculate that a lack of communication led to poor policing and cloudy transparency. We can't accurately account for the dialogue that initially took place between Officer White and Mr. Brown; but it is possible that a "misunderstanding" was involved. <sup>1</sup>A 2004 study conducted by the Massachusetts Bay Transit Authority consisted of officers recruiting police candidates from surrounding suburban neighborhoods to engage with youths in the urban community. The findings were shocking due to the number of frivolous arrests made and poor interactions between the urban youth and officers. This set the tone for Massachusetts Bay Transit Authority to invest in strategies for training officers on best practices for engaging with youth in the field. One of the strategies included an overview of how neurological changes occurring in teens' brains account for many of their "hard-to-police" behaviors. Officers learned how to establish authority using unconventional techniques, increase compliance from teens, and de-escalate volatile situations.

## Culture Resemblance

Many police departments are designed to serve and protect the community. It is natural for citizens to not trust anyone or anything in which they do not possess any mutual links. The Merriam -Webster dictionary defines the word link as a "*connecting structure*". In essence, a police department should have a connection that can be seen and experienced by the citizens they serve. The case of the Ferguson Police Department is not solely built on a "white officer shooting an unarmed black male", but puzzling factors including the Ferguson Police Department's demographics don't provide an authentic picture of the community they serve. Reports have shown that less than 2% of the Ferguson Police Department's workforce is African -Americans.

<sup>2</sup>Ferguson experienced a rapid change in their demographics over the years, as the percentage of African-Americans increased to 67%, leaving a population of Whites at 29%, and a population of 4% for unknown/other races. Even though the Ferguson Police Department is located near two historically black colleges, Harris-Stowe State University and Lincoln University of Missouri, the Ferguson Police Department failed to utilize the local colleges as a recruitment tool.

## Community Policing

Ferguson also set an unwelcomed tone for an incident that left the community feeling unheard. The community did not see the sympathy or empathy in police officers after the tragic event unfolded, but rather riot gear to prevent their voices from being heard. The use of protective equipment and tactics should have been explained to the community. The community viewed the Ferguson Police Department as have taken a military approach to ensure their officers were protected. The delay in the Ferguson Police Department's communication about the Michael Brown shooting left many police executives puzzled as it fueled an environment filled with confusion and hostility.

## Recommendations for Building a culture of Transparency:

- Training and Technical Assistance for Police Department be produced on the State Level: Over the past few years, it has been proven that training conducted in the Basic Law Enforcement Training or standard in-service recertification is not sufficient. The training would focus on fair and impartial policing, community relations and police integrity.
- Creating community dialogue: Police Chiefs must meet regularly with community leaders, non-profit groups, local clergies and agencies heads.
- Creating transparency: Police Chiefs must develop a practice of disseminating information about department activities and to discuss possible discipline issues. Must immediately disseminate information regarding officers involve incidents and controversial incidents.
- Informing and educating the community: Police Departments should open normal BLET and in-service training classes to community members and media and invite feedback from those who attend.

- Eliminating basis. Police Internal Review Boards should include a member from the City Human Resource of Community Relations Department to serve as a voting member of the departmental disciplinary hearings board.
- Federal and State support in developing effective police-community partnerships: Community policing represents a departure from familiar ways of operating for both the police and residents. It requires a policing perspective that goes beyond the standard law enforcement focus and a willingness to engage in nuts and bolts neighborhood problem solving. Effective partnerships also involve the willingness of community members to engage in constructive dialogue with the police. Through intentional efforts to build trust and collaborate, police and community members can act as catalysts and facilitators of activities to strengthen the community and increase safety. The violence prevention partnerships below are an example of this practice. Community partnerships must come from the agency head and must be instilled throughout the agency.

#### Improving Police and Youth Relations:

The Fayetteville Police Department took required steps to improving the relationship between the youth and police officers with programs such as Education Kids on Guns, Police Explorers and adopting the National Police Activities/Athletic League Program. Selecting officers with extensive experience working with youths, parents and community leaders to develop strategies to improve police/youth interactions through dialogues is essential to all relationship-building efforts. Creating training sessions for parents and youth, and the development of community oversight mechanisms has been a part in the success for this strategy and has been proven to work successfully.

In addition, building partnerships with local universities and faith based organizations often helps communities address conflict through research, assessment of the sources of conflict, and facilitating dialogues between communities and police. It is important to document the sources of conflict and developed approaches to reduce conflict through collective efforts, that are evidence based practices. A successful approach for improving youth relations between law enforcement officers should offer structured opportunities for police and youth to meet and work together.

#### Recommendations for Police Leadership and Youth Relations:

- Officer Selection: Officers that have a strong background with youths should be used as an advantage when starting or enhancing youth based-partnerships.
- Developing Needed Programs: Police Departments must ask for and receive recommendations from community organizations and faith based organizations on the needs of youths in the community. Actual implementation of recommended programs shows the community that you are listening.

## Police Leadership Development

The primary goals of most law enforcement agencies are to reduce crime and protect the citizens. These issues are essential to the policing mission, but officers won't be effective in their mission if they lack the necessary training. Every officer should be equipped with leadership skills and advanced training to combat the tasks they've been assigned. Some would argue that advanced training should be reserved for command staff, or other highly ranked officers, but this line of thinking limits the strengths of an agency to its top executives. Patrol officers and detectives spend an enormous amount of time in the streets interacting with the public. We would fail these officers if we limited their training to the minimum courses mandated by the State. Three core areas should be evaluated as they have an impact on skill development: educational background, Basic Law Enforcement Training (BLET) curriculum, and in-service training. The Fayetteville Police Department recently implemented the Fair and Impartial Training (FIP) by Dr. Lorie Fridell, in addition, also permitting entry level staff members to attend training under organizations such as NOBLE, State Management Development Training, and the International Association of Chief of Police. We have seen a remarkable change in the leadership for the police department after incorporating these changes. Having changed the way the Fayetteville Police Department conducts or provides training opportunities to staff that interact with the community has contributed to the 20% decrease in overall citizen complaints and encountered no deadly use of force incidents in 2014.

## Educational Background

An officer's ability to develop and exhibit exemplary leadership skills isn't defined by his or her pursuit of education beyond post-secondary school, but it speaks volumes about an officer's willingness to invest in himself. Studies have shown that approximately 16% of law enforcement agencies require an associate's degree, while only 4% require a four-year degree. In addition to the expenses incurred while pursuing a degree, a considerable amount of time and energy is involved. College graduates learned how to balance changing priorities and still remain focused on their overarching goal: graduation. Seeking a degree provides an opportunity to learn and view information from a different perspective, and the ability to think outside the box is a must for any police officer. A study conducted by Terril and Mastrofski in 2002 confirmed the notion that officers with a higher education degree were less likely not to use force. The notion was re-affirmed in 2007 study conducted by Terril and Paoline.

## Basic Law Enforcement Training (BLET) Curriculum

Basic law enforcement training (BLET) provides the foundation for aspiring police officers. Most law enforcement agencies require their police candidates to complete BLET prior to becoming a sworn police officer. Courses in the BLET curriculum vary from state to state, but they are designed to encompass skills officers need to transition into the field. Much of this basic training is directed to allowing the majority of candidates to successfully complete training rather than identifying those who

are most able to handle the rigors of police work. BLET often focuses on the physical tactics rather than communication skills.

#### Tension to fill the Ranks

The BLET curriculum is often developed by state training professionals who are not connected directly to the fast changing needs of the profession. Police agency leaders must balance the tension of fielding the best, most qualified candidates to simply filling "the seat" of a police car.

#### In-Service Training

In-service training courses are designed to make sure post topics are covered during the course of a year. Courses are designed and approved at the state level, and courses are aimed at the lowest common denominator of students. Firearms qualifications, legal updates, juvenile topics, etc. are standard topics covered annually with individual agencies left to determine additional needed training of those required, but that decision is left up to the In-Service Coordinator of that agency.

#### Recommendations for Leadership Development:

- Mandatory or encouraged educational requirement for all police officers, to include possession of at least an Associate's degree with Bachelor's degree preferred: It is becoming critical that officers obtain the critical thinking and analytical skills needed to fulfill the role of a police officer. The inability to process information from a variety of perspectives limits an officer's ability to lead others.
- Begin leadership training immediately: Tomorrow's police leaders are today's recruits: Identifying those who demonstrate promising traits that are necessary to lead police agencies and begin mentoring and formulate training to allow them to develop. Training must be affordable and accessible for every agency.
- Federal or State assistance for federal student loans: Federal loans received by students who obtain a degree in the criminal justice or law enforcement field and who commit to serving on recognized law enforcement agency as a full-time sworn public safety officer for five years. It is important that we break down any barrier that does not encourage officers to obtain higher education in the criminal justice field due to limited financial resources.

President's Task Force on 21<sup>st</sup> Century Policing  
Fayetteville Police Department  
Harold E. Medlock  
Written Testimony 2015

Endnotes:

[1] Strategies for Youth fact sheet, <http://strategiesforyouth.org/resources/facts/>.

[2] Ryan Gabrielson, Ryann Grochowski Jones and Eric Sagara, "Deadly Force, in Black and White," ProPublica, October 10, 2014, <http://www.propublica.org/article/deadly-force-in-black-and-white>.



## **The President's Task Force On 21<sup>st</sup> Century Policing**

**Topic: Mass Demonstrations**

**Presenter: Chief Rodney D. Monroe**

**Agency: Charlotte-Mecklenburg Police Department**

The Charlotte-Mecklenburg Police Department's (CMPD) overall philosophy during the Democratic National Convention (DNC) was to provide a safe environment for attendees, citizens, and officers so that the democratic process could occur while providing everyone an opportunity to peacefully have their voices heard.

CMPD wanted to ensure that the DNC was able to tell its "story" without the security operations and interaction with demonstrators by the Charlotte-Mecklenburg Police Department being the focus.

With an estimated attendance of 35,000 convention attendees, 6,000 delegates, 20 governors, thousands of security personnel and 15,000 media on hand over a five day period, there was always the potential for mass demonstrations. However, due to nearly 18 months of planning, CMPD was well prepared for any demonstrations whether planned or unplanned to occur.

The following are fundamental recommendations other law enforcement agencies, regardless of size, should consider when handling mass demonstrations.

### **Recommendation#1: Implementing Comprehensive Training Strategies**

Having officers properly trained for mass demonstrations is crucial. For the DNC, Mobile Field Force (MFF) training began in August 2011. Twelve hundred CMPD officers and over 400 officers from outside agencies in various support capacities were trained. The overall focus was on facilitating peaceful and lawful demonstrations by using tactics that kept demonstrators, the public, and officers safe.

To ensure a common operational picture, all outside agencies fell under the policies and command of CMPD. At times, this structure entailed outside agency supervisors of a higher rank reporting to a CMPD supervisor of a lower rank.

Training methods for police personnel included online delivery, tabletop exercises, field exercises and classroom lectures for internal and external participants. As a result, 65 training blocks of instruction, totaling more than 74,000 hours, were covered.

The scope of this training encompassed legal guidelines: First Amendment Rights, Passive and Peaceful Demonstrations, Use of Less Than Lethal Force, and Extraordinary Event Ordinance Training. Prior to delivering this instruction, CMPD consulted with local, state, federal and community partners to ensure a broad range of issues for each topic had been addressed.

In addition to training patrol officers, other large demonstrations were leveraged, such as the NATO Convention in Chicago, the Republican National Convention in Tampa, and tabletop

exercises for CMPD commanders to observe and practice strategies for dealing with demonstrations.

### **Recommendation#2: Using Resources Efficiently**

To sustain any long term demonstration, an agency must capitalize on local and regional resources to staff the demonstration while still providing daily police services. Through the development of agency partnerships ahead of time, technology use, and multi-agency training, this can be accomplished.

This training should include command staff, Mobile Field Force units (bikes, horses, motors and field officers), and Public Information Officers. Incorporating these entities into the comprehensive strategy will help maximize resources and sustain a multi-day event.

Furthermore, having command staff members visible and actively involved on the streets during the event demonstrates to everyone that supervision and decisions can be accomplished immediately.

### **Agency Partnerships**

Approximately 2,850 outside law enforcement personnel from 11 states and Washington, D.C. were used for the DNC. CMPD partners included 125 law enforcement agencies, with several providing more than 100 officers each. To ensure accountability, agencies were kept together by deploying a ratio of nine officers to one sergeant.

### **Mobile Field Force**

CMPD deployed over 1,000 officers, 300 bicycles and 50 dual sport motorcycles to Mobile Field Force operations along with hundreds more that were trained and working in another capacity if needed. However, the ultimate goal was to be prepared for all types of security incidences, while keeping the majority of CMPD specialized and tactical assets out of public view.

### **Strategic Implementation of Technology**

With one hundred twenty new cameras purchased for the DNC and access to nearly 500 other cameras, including those from the North Carolina Department of Transportation, Charlotte Department of Transportation, and private businesses, CMPD had a global operational picture.

Other CMPD technology included digital radios and license plate readers. Shot Spotter, which instantly and precisely pinpoints gunfire with accurate location data, also was used.

### **Recommendation #3: Developing After Action**

As with any mass demonstration, after action is always important. The CNA Group was contracted by the Bureau of Justice Assistance to develop a best practices document to guide other cities hosting future conventions. Some of their observations included:

- The use of technology is a force multiplier and provides aerial oversight of operations.
- The use of intel to pre-position officers where demonstrations may occur were valuable.

- Deploying police leadership in the field who could engage demonstrators and quickly diffuse unruly behavior resulted in peaceful marches.
- Developing a system that would better track and report on officer assignments would have been helpful.
- Refine a plan that would streamline and track all personnel during demobilization.
- Be prepared to provide logistical support to all personnel working; to include feeding, transportation, lodging, and tracking of time for salary reimbursement.

In conclusion, preparation and communication are crucial. However, there is no guarantee as to how a mass demonstration will eventually turn out. If law enforcement agencies start with the end goal in mind of providing a means for demonstrators to express their First Amendment rights, while ensuring the protection of those in attendance, then they will be able to handle any size problem should it arise. Again, preparedness is paramount.

Oral Testimony  
Chief Barbara O'Connor,  
President of NAWLEE and Chief of Police, University of Connecticut  
Presidential Task Force on 21st Century Policing  
"Culture and Diversity"  
January 30, 2015 Cincinnati, Ohio

Chairpersons Ramsay and Robinson, members of the Task Force, - Thank you for this opportunity for the National Association of Women Law Enforcement Executives (NAWLEE) to give our recommendations to address the issue of culture and diversity in policing.

As women leaders in law enforcement we believe we bring a unique perspective to this important discussion.

NAWLEE agrees that our police agencies should mirror the diversity of the communities we serve. As an organization we are passionate about policing in a fair and impartial manner. But in order to achieve this we must increase the number of women in policing. As you may know, the national average of women serving as police officers has remained stagnant at 12%.

However, we know women bring many valuable attributes to policing and a recent study done in 2005 titled: "Women Police: The Use of Force by and Against Female Officers" by Schuck and Rabe-Hemp, found that female officers generally use less force in police-citizen encounters than do their male counterparts. Overall, the findings support assertions that women and men perform policing duties differently and that hiring more women as police officers may help to reduce excessive force.

So, this brings up two questions. Why do women use less force than men? But more importantly, can their techniques, be trained across genders?

In the following recommendations, NAWLEE is not suggesting anyone make exceptions to the rules of the profession, but we **are challenging the rules themselves.**

**Recommendation #1-** Conduct an in-depth new study to update past data to clearly identify and define the practices and techniques that have been proven to be effective and train all officers, regardless of gender, in those techniques.

**Recommendation #2-** Enhanced communications skills will lead to less force. Integrate into training and ongoing in- service education, the art of effective communications skills. Our men and women spend more time talking with those we encounter than we do in the use of any other police procedure. We need to focus our training on de-escalation skills with the same vigor as we do in the training of use of force and defense tactics.

**Recommendation #3-** As part of the new training we must also add more emphasis on mediation, facilitation and, interpersonal skills, along with emotional intelligence, cultural competency, unconscious bias, and dealing with emotionally disturbed people. Better communications builds public trust. which minimizes use of force.

**Recommendation #4-** We must place greater emphasis on problem solving policing. Teaching these skills and strategies will go a long way to building trust and turning our culture from "enforcement only" to problem solvers.

**Again, we are not asking for exceptions to the rules...We are challenging the rules!**

It is no surprise that we believe policing can be enhanced by increasing the number of women in our ranks. We also know we are not the only leaders who think this way. However, our society has NEVER adapted to or encouraged more women to enter policing. As a result the overall number of women in policing has not risen.

**Recommendation #5-** The profession must shift its recruitment strategies to recruit more women and at the same time, we must ensure our profession makes the changes necessary to take advantage of the unique skills which women bring to policing.

Let me outline some of the challenges and issues we believe prevent women from entering into law enforcement.

- Lack of schedule flexibility for those who wish or already are raising a family.
- Physical standard testing. All female officers must be able to control a situation if and when force of any kind is needed, but having the same exact standards for males and females does not make sense. Again, we aren't asking our profession to make exceptions to these fitness standards-we are simply challenging the rules themselves. It's time for a paradigm shift.

For instance, right now in the State of Wisconsin the plan is to institute new physical fitness standards. It has been determined that in applying this new standard to one

major Wisconsin city that 82% of the female officers currently performing well in police jobs, would fail to meet the new standard! **The end result will be a decrease in the number of women policing and ultimately a decline in the quality of law enforcement services to this particular community and state.**

- There is a lack of consistency on the physical fitness standards and too much emphasis is placed on these standards.
- Some women believe they can't rise into higher ranks and also raise a family.

This is not a gender issue- This is about the quality of law enforcement services across the nation.

Thank you for your time. I am happy to answer any questions you may have.

## Testimony to the President's Task Force on 21<sup>st</sup> Century Policing

Kirk Primas, Assistant Sheriff, Las Vegas Metropolitan Police Department

January 30, 2015 / Cincinnati, Ohio.

Thank you for the opportunity to speak to you today. I do so with over 32 years of law enforcement experience.

In 2010 our agency had 25 officer-involved shootings (OIS). This was this highest number of OIS's in the agency's history. Six of those shootings involved unarmed persons; four were African-American males. Members from the local chapters of the American Civil Liberties Union (ACLU) and National Association for the Advancement of Colored People (NAACP) began to challenge the agency's actions. Furthermore, the *Las Vegas Review Journal* (RJ) embarked on a year-long investigation looking into OIS's going back to 1990. By the end of 2011, the RJ published its findings in a five-part series titled, "Deadly Force: When Las Vegas Officers Shoot, and Kill."

While this was occurring, our agency, like so many others in the country, was facing a significant budget deficit, reducing its workforce by not filling existing positions, and responding to increased demands for quality police services. Morale diminished and many employees were concerned about stable employment even though the Sheriff made it very clear there would no layoffs.

Compounding a work environment of uncertainty, the agency struggled with a policing philosophy that was putting us at odds with our community: Are we warriors or guardians? Many of us knew the answer, yet how does an organization convince its workforce, during a particular time of stress, that a shift in policing style was necessary for us to be successful.

Recognizing the need to *reform a culture that has been resistant to change*, the organization entered into a first ever Collaborative Reform Process through the Community Oriented Police Service (COPS) Office. After a comprehensive assessment of our agency's policies and practices, the organization agreed to focus on four goals: (1) reduce the number of officer involved shootings; (2) reduce the number of persons killed as a result of officer involved shootings; (3) transform LVMPD's organization and culture as it relates to deadly force; and, (4) enhance officer safety.

To organize our reform model, we separated our work into four primary areas: (1) developing robust *policies* that reflect community inclusion, transparency, and clear expectations (2) developing a *training curriculum* based on real-life scenarios (3) developing *investigative protocols* that clearly demonstrate our desire to get to the root of decision making and problem solving, and (4) developing an *accountability model* that was process driven, not people driven.

### Developing Robust Policies



Our Use of Force policy was the most significant policy change we made during our reform. Taking advice from our multi-cultural committee and local ACLU and NAACP chapters, we added language emphasizing the *sanctity of human life*. Using this phrase as our guiding principle, we underscored *de-escalation* over the use of force, redefined levels of resistance and control, modified our Electronic Control Device (ECD) usage and reporting requirements, defined officer expectations when using less-lethal shotguns, required officers announce their intent to deploy rifles, and placed greater responsibility on first line supervisors during tactical operations.

In our mind, this was the beginning of a policy shift from a *warrior mentality* to a *guardian mentality*, but a policy is useless unless the workforce sees it as credible. To establish credibility and greater buy-in from the workforce, we knew we had to personally deliver the updated Use of Force policy to the organization. To aid us, we developed a cadre of well-respected officers who: (1) were given a chance to tear our policy apart and offer revisions; (2) identify potential questions from the workforce and appropriate responses; and (3) present the final version to the agency. Through personal and frequent messaging, we were able to reduce fears, increase organizational buy-in, and give officers a forum to voice their concerns regarding the new policy.

### Training

Whereas the Use of Force policy set the direction for a culture change, the creation and implementation of Reality-Based Training (RBT) gave our reform efforts momentum and credibility with the workforce and community.

By reconstructing a number of officer involved shootings and critical incidents that occurred within the Las Vegas valley, we were able to create a series of scenario-based exercises that emphasized *containment, de-escalation, force transition, squad tactics, decision making, and problem solving*. Through this training, we were able to teach our workforce how to better problem solve a critical event before using a deadly force option. As for the community, many of our community reform stakeholders have gone through the training and frequently walk away with a different perspective about force than when they started. Today, this training is well-received by our workforce and the community and serves as an incubator to test new ideas and address emerging force issues.

In my view this is the leading reason why we were able to reduce officer involved shootings. Our success was clearly evident in the numbers. We reduced our OISs to 13 shootings in 2012. In 2014, although we experienced 16 OISs, each of the subjects encountered in the OISs was armed. We have also experienced a significant reduction in our lower-level uses of force.

### Developing Investigative Protocols

In 2010 we created the Critical Incident Review Team (CIRT), which was and is responsible for conducting the administrative review of all officer involved shootings and other high risk operations. These reviews serve a number of purposes. First, they are complete, thorough, and

offer the organization a systematic view into an officer's decision to use deadly force. Second, the reviews explore actions and decision making of officers leading up to, during, and after the use of deadly force. Many lessons can be learned by viewing a critical incident in its entirety as opposed to limiting the review to only that moment in time when force is used. Third, the criminal investigation is reviewed to ensure investigative integrity. Fourth, the findings from the CIRT review can be measured against training objectives to compare what is occurring on the street to what is being trained in a controlled environment. And last, the findings of the review are presented at the Critical Incident Review Process, which I will explain in a moment.

In 2014, at the recommendation of the COPS Office, we removed the responsibility of investigating deadly force incidents from the Homicide Section and established a stand-alone Force Investigation Team (FIT). There are a number of benefits for doing so that I would like to highlight. First, FIT detectives only investigate deadly force and categorical uses of force incidents. This allows FIT detectives to focus singularly on force investigations. Second, FIT detectives become experts in their field, thus establishing credibility and trust between the agency and the community regarding their criminal investigations. Third, FIT detectives are part of the organizational learning environment, thus offer an immediate glimpse into training and equipment issues that may arise during the course of a criminal investigation. And last, the team is small, thus making it easier to ensure acceptable and standardized investigative protocols.

#### Developing An Accountability Model

There is no one perfect accountability system. But we can rest assured that if such a system is based on personality, it is certain to fail. That said, our agency and community has worked hard to create and modify several accountability systems that we hope leads to greater transparency and community trust.

First, within an hour or so after a deadly force incident, the captain overseeing the Force Investigative Team conducts a media statement about the event; this is immediately placed on YouTube for the public and our agency to see. Following the media statement, the captain participates in a media briefing with the local press. More than ever before, we find ourselves getting ahead of the conversation by providing timely and accurate information to the public.

Second, completed investigative reports from the Force Investigation Team as well as the District Attorney are uploaded onto our agency website. This allows for interested parties to come to their own conclusions about the case and how effective our agency was in conducting the investigation. To this end, the District Attorney plays an important and active role; DAs respond to the scene during the initial incident and they are also present during an early FIT briefing to the Sheriff (72-hours) detailing what the agency knows at that time. Accuracy and timely follow-up are important aspects of this briefing for providing the Sheriff with information that may be critical to act upon in mitigating risk for the agency.

And last, we established a bifurcated deadly force review process, referred to as the Critical Incident Review Process (CIRP) that thoroughly reviews all aspects of an incident involving the use of deadly force by an officer. The Board is composed of citizen members, who are not affiliated with the agency, and commissioned police officers. It is a two-part process that examines *tactics, decision-making, policy and procedure, training, supervision*, as well as the *actual use of force*. At the conclusion of the presentation all members of the board are permitted

to ask questions of the investigator and the members who were involved in the incident. The board then renders a decision, first on the actual use of force, and then on all areas associated with the incident. As compared to other systems we had in place, we've seen a 30% increase in sanctions coming from the board regarding tactics, decision making, supervision and the choice to use deadly force. In my view, this is evidence that our system is demonstrating greater accountability and improving officer performance.

*It is important to note that the citizen board members are invited to the scene of an officer involved shooting to get a sense of what happened.*

### Next Steps

As a forward learning organization, we are not done examining best practices, nor are we done with the Collaborative Reform Process. We continue to seek new and innovative ways to reduce the use of deadly force, enhance training, improve officer safety, and analyze our agency's force profile. We continue to build community support and trust with community activities and faith-based leaders.

### Recommendations

As we share with the many agencies that visit us and review our programs, there are four areas that we will continue to focus on are, and that the Task Force should consider:

- Relevant and updated policies.
- Frequent and effective training.
- Consistent and transparent Investigative Protocols.
- Maintaining an effective Accountability Model

Thank you again for allowing me to speak today.

Greetings, esteemed panelists, commissioners, and colleagues, I am honored to be here. In such a historic time of mass civic participation, we as a nation stand before an incredible opportunity to right one of America's greatest wrongs. The problems before us are not new. But the level of investment and commitment needed to address police misconduct and restore integrity and equality to our criminal justice system is great and must be realized immediately in order to ensure the necessary real-world change. On behalf of more than 1 million ColorOfChange members nationwide, I thank you for the opportunity to contribute to this critical process. I also applaud and recognize the important steps the President and White House have taken in recent months in regards to police reform.

The tragic killing of 18-year-old Mike Brown by Ferguson Police Officer Darren Wilson has sparked a new, growing racial justice movement. More than 170 days later, courageous Black youth and Americans of all walks of life are still risking their lives and liberty to demand a more just America where law enforcement honors the rights and dignity of all communities.<sup>1</sup>

We come here today amidst what can only be described as a national crisis of discriminatory police violence and a fundamental failure of the justice system. Millions nationwide doubt and mistrust law enforcement, as well as the ability of local, state and federal prosecutor to investigate and hold individual officers accountable or to advance structural changes to police departments to keep our communities safe. As I hear often from our members: Black and brown people in cities across America face the very real threat that they or one of their loved ones will be unjustly stopped, assaulted or killed by law enforcement.

The problems of policing are many--From the failed practices of Stop and Frisk and Broken Windows policing,<sup>2</sup> which institutionalizes racial profiling, to sexual abuse,<sup>3</sup> illegal surveillance<sup>4</sup> and unjust arrests,<sup>5</sup> the killing of civilians,<sup>6</sup> and mass incarceration.<sup>7</sup> Misconduct and racial bias pervade policing practices, structures and culture with largely no effective, independent oversight or accountability. And in order to create and enforce a higher standard of policing nationwide, we have offer following concrete reforms for the White House that relate to the focus of today's task force session:

- **Civilian oversight: we urge the expansion of strong, empowered state and local level civilian control over law enforcement nationwide.**<sup>8 9 10</sup> There has been much research done into the criteria of effective civilian oversight boards, but general guidelines include strong political and public support, police cooperation, a proactive approach to identify underlying systemic problems with police and the comprehensive legal power to resolve said issues, as well as control over more than police misconduct, but police hiring and firing, policing priorities, and participatory budgeting as well.<sup>11</sup> We suggest that funding in part for the expansion of community controlled and community based policing come from the termination of all federal anti-drug grants.<sup>12</sup>

- **Influence of police culture: we urge the divestment of federal funding from police departments that demonstrate abuse of power and discriminatory policing, and the reinvestment of said funds into community controlled policing and policing alternatives;**<sup>13</sup> Endemic to police departments across the country is a culture of secrecy, impunity, profit-driven policing, violence and racial bias.<sup>14</sup> Police unions play a large role in perpetuating this culture and maintaining a dangerous divide between law enforcement and common-sense policing reforms. The divestment of federal funds from law enforcement and subsequent reinvestment in civilian oversight and social services, such as mental health care and others that are proven to keep communities safe, has the potential to realign policing culture and priorities towards transparency, public accountability, racial equity and public safety.<sup>15</sup>
- **Disciplinary systems: we urge the mandating of Peace Officer Standards and Training (POST) Commissions in every state, as well as and inter and intrastate coordination between all POST commissions;**<sup>16</sup> Law enforcement is one of the few professions without a regulated state-wide board in every state that is able to suspend or remove police licenses/certifications. Only 43 states have POSTs that are able to revoke an officer's license<sup>17</sup> and there is no streamlined system that allows for communication between POSTs to prevent the rehiring of abusive police officers across state and city lines.<sup>18</sup>
- **Use of force: we also demand a national use of force matrix and mandating that state and local police have clear and streamlined matrices.**<sup>19</sup> A number of localities already use discipline matrices to create uniform mechanisms of accountability. In combination with effective enforcement and community oversight of law enforcement, federal streamlined matrices would be a significant step in the right direction for setting and enforcing a higher standard of police conduct.
- **Regarding mass demonstrations, free speech, and the use of military equipment: we demand an end to the 1033 program and similar federal initiatives that fuel police militarization.** The latest action by Attorney General Holder was a major step in the right direction, as was the White House's review of the 1033 program, but it is our view that both initiatives didn't go far enough.<sup>20</sup> The militarization of police brought about by the discriminatory and failed War on Drugs has consistently and systematically violated the first and fourth amendment rights of citizens.<sup>21</sup>
- **Civil rights enforcement: we urge President Obama to pass an executive order that reinforces and expands civil rights law and bans on discriminatory and violent policing;**<sup>22</sup> There are plenty of civil rights laws on the books that, if enforced, could hold officers and police departments accountable for discrimination and unjust violence. But enforcement is not up to speed with the scale and size of the problem at hand.<sup>23 24</sup>

- **Research and data collection: we urge the White House and Department of Justice to move forward a national database<sup>25</sup> on police use of force.<sup>26</sup>** As of today, such a database does not exist, although recent congressional action<sup>27</sup> and leadership from the Attorney General Holder<sup>28</sup> signals renewed commitment. But we cannot afford to wait another two or three years for this critical information that will allow federal officials to identify patterns of misconduct, hold individual officers and departments accountable when necessary, address the policies that incentivize police brutality, and implement reforms that allow law enforcement to do its job while respecting the lives and dignity of all communities.

I welcome the opportunity to work more closely with the administration in implementing the above-mentioned recommendations and thank you again for the opportunity to speak here today. Please find additional information on ColorOfChange's work in regards to this issue area below. I may be reached by phone or email at 646-573-3949 and [rashad@colorofchange.org](mailto:rashad@colorofchange.org).

Best regards,  
Rashad Robinson, Executive Director, ColorOfChange



### Appendices:

ColorOfChange member comments regarding national crisis of police brutality:

[https://s3.amazonaws.com/s3.colorofchange.org/images/ColorOfChangeNationalPolicingComments1-8-2015\\_name\\_abbr\\_with\\_comments-2015010.pdf](https://s3.amazonaws.com/s3.colorofchange.org/images/ColorOfChangeNationalPolicingComments1-8-2015_name_abbr_with_comments-2015010.pdf)

- *"Please stop the killings, Mr. President, of unarmed men and women."* Tammy K., Cleveland, OH
- *"As a childhood victim of police harassment I ask that our police force, which has been given tremendous power, also have a much higher standard of operating."* Richard S., Chicago, IL
- *"I pray for the opportunity to see and help raise my grandchildren. I can't see that dream fulfilled if my son becomes a victim of overzealous policing... my son has not been a casualty. Please help ensure he never will be."* Cicelli W., Moreno Valley, CA
- *"Justice is our country's highest priority. The rest of the world is watching to see if we fail at this basic premise of democracy. Please take action decisively and quickly."*--Leslie M., Everett, WA

120,000 signatures calling on federal government to implement systemic reforms:

<https://s3.amazonaws.com/s3.colorofchange.org/images/NationalPolicingReformDelivery.pdf>

[https://s3.amazonaws.com/s3.colorofchange.org/images/merged\\_document.pdf](https://s3.amazonaws.com/s3.colorofchange.org/images/merged_document.pdf)

## **ColorOfChange campaign work related to national policing:**

[www.NationalPolicingReforms.org](http://www.NationalPolicingReforms.org)

[www.EndPoliceAbuse.org](http://www.EndPoliceAbuse.org)

[www.KilledByCops.org](http://www.KilledByCops.org)

[www.JusticeForMikeBrown.org](http://www.JusticeForMikeBrown.org)

[www.JusticeForEricGarner.org](http://www.JusticeForEricGarner.org)

## **[9 ways the federal government can help end police brutality](#)**

<sup>1</sup> In the past 5 months, more than 1 million ColorOfChange members and our allies have taken part in this growing movement and urged President Obama and the federal government to prosecute Darren Wilson and NYPD Officer Daniel Pantaleo for the killings of Mike Brown and Eric Garner, and to implement structural changes to address what can only be described as a crisis of violent and discriminatory policing. For more information please see:

“More than 950,000 Signatures Delivered to White House Calling for Justice for Michael Brown and an End to Nationwide Crisis of Police Violence,” ColorOfChange 08-28-14

<http://colorofchange.org/press/releases/2014/8/28/brown-white-house-petition-delivery/>

<sup>2</sup> “Stop-And-Frisk Concerns Spread Nationwide,” Mint Press News 11-22-2013

<http://www.mintpressnews.com/stop-and-frisk-concerns-spread-nationwide/173205/>

<sup>3</sup> According to the National Police Misconduct Reporting Project, 9.3 percent of complaints on police were regarding sexual assault. For more information please see, “Police Departments Ignore Rampant Sexual Assault by Officers,” TruthOut 06-02-2014 <http://www.truth-out.org/news/item/24677-police-departments-ignore-rampant-sexual-assault-by-officers>

<sup>4</sup> “How NYPD Surveillance Could Affect Eric Garner Protesters,” ThinkProgress 12-06-2014

<http://thinkprogress.org/justice/2014/12/06/3600158/nypd-social-media-eric-garner-protests/>

<sup>5</sup> “The New Jim Crow: Mass Incarceration in the Age of Colorblindness,” The New Press, Michelle Alexander, 2010 <http://goo.gl/ECcMyh>

<sup>6</sup> “Killed By Cops,” ColorOfChange 10-12-14 <http://www.killedbycops.org/>

<sup>7</sup> See reference 5.

<sup>8</sup> Civilian oversight is reflective of core democratic values, including transparent, effective government that is accountable to the public. When implemented correctly, civilian oversight over law enforcement has the potential to increase police accountability and improve trust between police and the communities they are empowered to protect and serve. Of all government agencies, community control over law enforcement is particularly important due to law enforcement’s ability to use force and take away life and liberty. The more traditional practice of law enforcement and local prosecutors investigating police misconduct prevents the critical, independent oversight that is needed for truly effective policing and public safety.

<sup>9</sup> “Civilian Oversight of Policing, Lessons from the Literature,” Vera Institute for Justice, May 5th-8th 2002

[http://www.vera.org/sites/default/files/resources/downloads/Civilian\\_oversight.pdf](http://www.vera.org/sites/default/files/resources/downloads/Civilian_oversight.pdf)

<sup>10</sup> “Why It’s Impossible to Indict a Cop,” The Nation, 11-24-2014 <http://www.thenation.com/article/190937/why-its-impossible-indict-cop>

<sup>11</sup> See reference 9.

<sup>12</sup> “War on Drugs: Report of the Global Commission on Drug Policy,” Open Society Foundations and Global Commission on Drug Policy, 06-02-2011 <http://www.opensocietyfoundations.org/reports/war-drugs-report-global-commission-drug-policy>

<sup>13</sup> “6 ideas for a cop free world,” Rolling Stones 06-14-2014 <http://www.rollingstone.com/politics/news/policing-is-a-dirty-job-but-nobodys-gotta-do-it-6-ideas-for-a-cop-free-world-20141216>

<sup>14</sup> Police unions commonly regard any oversight or acknowledgement of misconduct as a threat to power, creating nearly insurmountable barriers to much-needed reforms. For more information see: “New York City’s largest police

---

union thinks it's under attack by de Blasio. It's felt that way about every mayor," Slate 12-2014  
[http://www.slate.com/articles/news\\_and\\_politics/politics/2014/12/nypd\\_killings\\_new\\_york\\_city\\_s\\_largest\\_police\\_u  
nion\\_thinks\\_it\\_s\\_under\\_attack.html](http://www.slate.com/articles/news_and_politics/politics/2014/12/nypd_killings_new_york_city_s_largest_police_union_thinks_it_s_under_attack.html)

<sup>15</sup> See reference 13.

<sup>16</sup> POSTs are an effective, under-utilized form of addressing discriminatory and abusive policing, as they are an objective body removed from many of the corruptive influences that prevent local prosecutors from holding police accountable. For more information please see: "Revocation of Police Officer Certification," Roger L. Goldman, Steven Puro, Prison Legal News 6-21-15

[https://www.prisonlegalnews.org/media/publications/goldman\\_revocation\\_cert\\_for\\_police\\_misconduct\\_2001.pdf](https://www.prisonlegalnews.org/media/publications/goldman_revocation_cert_for_police_misconduct_2001.pdf)

<sup>17</sup> The even states without revocation authority are Hawaii, Indiana, Massachusetts, New Jersey, New York, Rhode Island and Washington.

<sup>18</sup> See reference 16.

<sup>19</sup> "Employee Disciplinary Matrix: A Search for Fairness in the Disciplinary Process," Police Chief Magazine 10-2006

[http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=1024&issue\\_id=102006](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1024&issue_id=102006)

<sup>20</sup> "More fallout from Eric Holder's changes to civil asset forfeiture law," Washington Post 1-19-15

<http://www.washingtonpost.com/news/the-watch/wp/2015/01/19/more-fallout-from-eric-holders-changes-to-civil-asset-forfeiture-law/>

<sup>21</sup> "The War Comes Home: The Excessive Militarization of American Policing," American Civil Liberties Union 06-2014 <https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rell.pdf>

<sup>22</sup> In addition to full enforcement of already existing federal prohibitions on discriminatory policing (Civil Rights Act of 1964 and 18 U.S.C. § 241, 18 U.S.C. § 242), we also recommend a fully-resourced and rigorous civil rights and criminal investigation by the DOJ into discriminatory policing, excessive force, and death or injury by police in every state in the country; and increased funding for the DOJ's Office for Civil Rights to ensure additional, accessible state-level responders for police and other civil rights violations.

<sup>23</sup> An executive order could renew political commitment to ending discriminatory policing and restoring integrity to policing. The current crisis also calls for an expansion of the prohibition on police violence beyond the current race, color, national origin, sex, and religion. We urge a prohibition of discriminatory policing on the basis of race, color, ethnicity, religion, national origin, age, gender identity or expression, sexual orientation, immigration status, disability, and housing status.

<sup>24</sup> "America's police departments need greater accountability. And it must come from outside the forces," Slate 8-29-14

[http://www.slate.com/articles/news\\_and\\_politics/politics/2014/08/policing\\_the\\_police\\_america\\_sLaw\\_enforcement\\_needs\\_greater\\_accountability.html](http://www.slate.com/articles/news_and_politics/politics/2014/08/policing_the_police_america_sLaw_enforcement_needs_greater_accountability.html)

<sup>25</sup> A comprehensive, streamlined, public national-level database of police shootings, excessive force, misconduct complaints, traffic and pedestrian stops, and arrests, broken down by race and other demographic data, with key privacy protections, including the exclusion of personally identifying factors and deportation immunity for civilians. Such data would also allow for more insight into a "rate of accountability," how often police officers accused of unethical or illegal conduct actually face discipline and of what nature.

<sup>26</sup> The Attorney General is required to collect such data on police use of force by the Violent Crime Control and Law Enforcement Act of 1994 but according to media reports the latest report was issued in 2001.

<sup>27</sup> "Statement from ColorOfChange.org on Congress Passing legislation Requiring Police Departments to Keep Track of How Many People They Kill," ColorOfChange 12-15-2014

<http://colorofchange.org/press/releases/2014/12/15/statement-colorofchangeorg-congress-passing-legisl/>

<sup>28</sup> "Eric Holder: Lack Of Police Shooting Data 'Unacceptable'," Huffington Post 01-15-2015

[http://www.huffingtonpost.com/2015/01/15/eric-holder-police-shootings\\_n\\_6479114.html](http://www.huffingtonpost.com/2015/01/15/eric-holder-police-shootings_n_6479114.html)



## Testimony by Chuck Wexler, Executive Director

### Police Executive Research Forum

### Before the Task Force on 21<sup>st</sup> Century Policing

January 30, 2015 – Cincinnati, OH



Thank you for the opportunity to offer my perspectives on the important mission of the Task Force on 21<sup>st</sup> Century Policing.

For more than 20 years I have served as executive director of the Police Executive Research Forum (PERF), which is a research and policy organization based in Washington, D.C., dedicated to advancing the profession of policing. PERF is also a membership organization of police chiefs and others with an interest in policing.

In my testimony, I will describe findings from PERF's current research and what we have learned from many forward-thinking leaders in policing today.

Each year, PERF conducts research projects on the most important issues in policing. For example, last September, PERF convened a meeting in Chicago of nearly 200 police chiefs and other officials to discuss the implications of the incidents in Ferguson, Missouri. In another project last year, PERF released a set of recommendations for police agencies that deploy body-worn cameras<sup>1</sup> – the small video cameras that officers wear to provide a video record of their encounters with members of the public.

**You have asked me to focus my testimony on use-of-force investigations and oversight.**

Your interest in use-of-force investigations may stem from the fact that when there is a controversial officer-involved shooting or other use of force, in the large majority of cases, the use of force is found to be justified by the circumstances. But in some cases the officer's use of force does not appear to have been necessary, and so community members become frustrated.

We need strong systems for reviewing police uses of force, and these systems must demonstrate transparency to the public. State and local jurisdictions are considering a variety of proposals to increase accountability in these investigations.

I believe there is also a larger issue that is beginning to gain traction among progressive police chiefs, namely, that in addition to reviewing particular use-of-force incidents after the fact, we need to acknowledge that some of these incidents could have been prevented, and we must try to find ways of preventing those incidents in the first place.

In other words, leading police chiefs are saying that we need to “go upstream” to the minutes before a controversial shooting or other use of force happened, to analyze what occurred and why, examine all of the factors that were involved, and ask whether the officer may have missed opportunities to de-escalate the situation.

So instead of focusing solely on the narrow issue of whether a use of force was legally justifiable under the circumstances, we should also look at whether other choices were available that could have prevented those circumstances from developing.

**More specifically, following are some of the lessons we have learned from PERF’s research over the years that can help reduce police use of force:**

**Policies matter:** Strict, carefully written policies can stop unnecessary uses of force. For example, PERF has long called for policies that bar officers from shooting at moving vehicles.<sup>2</sup> If the driver is shot, the vehicle becomes a totally unguided threat. So if a suspect is aiming a moving vehicle at an officer, it is safer for everyone for the officer to step out of the way, if possible, rather than shooting at the vehicle.

The New York City Police Department implemented this policy in 1972, and the number of fatal police shootings immediately plummeted, from 93 in 1971 to 66 in 1972. That trend continued downward, and fatal shootings by NYPD officers have remained below 20 in every year since 1998, with 8 fatalities in 2013.<sup>3</sup>

And yet, some police departments across the country still have policies allowing officers to fire at moving vehicles. This one policy change could significantly reduce shootings by police.

**Tactics matter:** Police are trained in tactics for many different types of situations. Over the last year or two, there has been a growing discussion about tactics for officers to de-escalate or disengage from low-level confrontations. The goal is to avoid putting officers in a position where they will have no alternative but to use deadly force.

We have learned that any time officers realize that a situation appears to have potential for requiring use of force, the officers should call and request that their

supervisor come to the scene immediately. We know that having a supervisor at the scene can prevent unnecessary uses of force.

**De-escalation skills are critical:** In traditional police culture, officers are taught never to back down from a confrontation, but instead to run *toward* the dangerous situation that everyone else is running away from. However, sometimes the best tactic for dealing with a minor confrontation is to step back, call for assistance, de-escalate, and perhaps plan a different enforcement action that can be taken more safely later.

For example, if a person on the street seems determined to start an argument with an officer, sometimes the best tactic is to refuse to engage. As one chief expressed it, “Somebody has to be the adult in the room, the one to de-escalate tensions, and it has to be the police officer.”

Furthermore, some chiefs speak of a “duty to intervene.” In other words, if officers see another officer overreacting to a heated situation, they should be required to step in and de-escalate the encounter.

**“Respect” is often at the heart of conflict:** Often, issues of respect figure in low-level confrontations between police officers and people on the street. Words matter, and the manner in which an officer initiates an encounter with a community member can help establish a tone of mutual respect. In situations where a community member may be agitated, the officer must be the grown-up and attempt to de-escalate the encounter.

**Learning from incidents is not “second-guessing”:** In the aftermath of a controversial shooting by an officer, it is not unusual to hear police say, “The officer had to make a split-second decision; we shouldn’t second-guess that decision.” And it is true that police often must respond quickly to complex situations; many of the most controversial incidents play out in a minute or less.

However, today’s police departments know that it is not “second-guessing” to learn from tragic incidents in order to prevent the next incident from happening. This is how police departments learn, develop new policies and tactics, and take lessons from each other.

**Persons with mental illness:** Often it seems that our streets are filled with disturbed individuals leading troubled lives. People with mental illness (or a developmental disability, drug addiction, or other conditions) can act erratically and dangerously. If the person starts to wave a knife or other weapon, the results can be tragic.

Police encounters with mentally ill persons occur so often that most police departments have developed a variety of protocols to reduce the chances that force will be used.<sup>4</sup> Often the first step is to teach officers basic skills in recognizing symptoms of mental illness, so they have a better chance of correctly recognizing a cry for help.

Many departments have Crisis Intervention Teams, in which police officers team up with mental health workers to de-escalate potentially dangerous encounters. When police encounter a dangerous mentally ill person on the street, officers are trained to “slow the situation down,” call for back-up, and avoid provoking the person. Asking questions can be more effective than issuing orders that the person may not be capable of understanding.

From the officer’s perspective, slowing the situation down, and trying to maintain some physical distance from the mentally ill person, provides time to talk to the person, de-escalate the tension, get more people on the scene to help, and reduce the risk that the person might make a threatening move and trigger a use of force by the officer.

**Integrated training:** Many police chiefs endorse “scenario-based” training programs, in which officers experience real-world situations and learn to make good decisions. Such training aims to replicate the quickly changing, often chaotic circumstances that occur in the moments before a use of force, so officers can gain realistic experience in responding to these stressful situations.

Too many departments have training programs that are fragmented, with separate courses on use of force, encounters with mentally ill persons, and so on. Integrated courses that combine these concepts are more effective in teaching officers what they need to know. We need to re-engineer how police training is conducted, so that it integrates all aspects of police work in ways that mirror what actually happens on the street.

As more police departments deploy body-worn cameras, footage from the cameras can be used in recruit training and in-service training. In some cases, video may provide examples of officers who successfully de-escalated an incident or used their skills and tactics to avoid a use of force. In other cases, videos of incidents that ended badly can be an effective tool for teaching officers what not to do.

**Diversifying police forces:** Leading police chiefs have said that racial and ethnic diversity within a police force is “necessary but not sufficient.” Having a department that reflects the community brings different perspectives to the police department, and it helps to build relationships with communities. It is also important to ensure that all officers, regardless of their race, ethnicity, or gender, are carefully trained and supervised. The role of first-line supervisors, typically sergeants, is extremely important, because they are in the

best position to know what officers are doing and to detect signs that officers may be experiencing problems or engaging in improper behavior.

**Comprehensive approaches:** 2014 was a challenging year for the policing profession. If there is one thing we have learned through all the work that PERF has done over nearly 40 years, it is that with proper policies, training and supervision of officers, and critiquing of incidents, we can reduce use of force. Good policing is the sum of all of these elements, which must be done simultaneously and continuously.

Police departments nationwide have changed how we deal with crime. Instead of focusing only on making arrests, today's police work to prevent crimes from being committed. These efforts have been successful; violent crime rates are half of what they were in the 1990s. **Today we need to make a similar change in our approaches to reducing use of force. Instead of focusing almost entirely on how we investigate incidents after they occur, we need to develop strategies for preventing incidents. We need to collect accurate information, analyze patterns, develop best practices, and measure how each department is doing to reduce use of force.**

Thank you for this opportunity to share my views. I would be glad to answer any questions that members of the Task Force may have.

---

<sup>1</sup> Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned  
[http://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf](http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf)

<sup>2</sup> See, for example, U.S. Customs and Border Protection Use of Force Review: Cases and Policies.  
<http://www.cbp.gov/sites/default/files/documents/PERFReport.pdf>

<sup>3</sup> “Annual Firearms Discharge Report, 2013.” New York City Police Department. Page 50, Figure A.4.  
[http://www.nyc.gov/html/nypd/downloads/pdf/analysis\\_and\\_planning/nypd\\_annual\\_firearms\\_discharge\\_report\\_2013.pdf](http://www.nyc.gov/html/nypd/downloads/pdf/analysis_and_planning/nypd_annual_firearms_discharge_report_2013.pdf)

<sup>4</sup> An Integrated Approach to De-Escalation and Minimizing Use of Force  
[http://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf](http://www.policeforum.org/assets/docs/Critical_Issues_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf)

#### **Other PERF reports regarding police use of force:**

Legitimacy and Procedural Justice: A New Element of Police Leadership  
[http://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Leadership/legitimacy%20and%20procedural%20justice%20-%20a%20new%20element%20of%20police%20leadership.pdf](http://www.policeforum.org/assets/docs/Free_Online_Documents/Leadership/legitimacy%20and%20procedural%20justice%20-%20a%20new%20element%20of%20police%20leadership.pdf)

Civil Rights Investigations of Local Police: Lessons Learned  
[http://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf](http://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf)

Managing Major Events: Best Practices from the Field  
[http://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/managing%20major%20events%20-%20best%20practices%20from%20the%20field%202011.pdf](http://www.policeforum.org/assets/docs/Critical_Issues_Series/managing%20major%20events%20-%20best%20practices%20from%20the%20field%202011.pdf)

2011 Electronic Control Weapon Guidelines  
[http://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Use\\_of\\_Force/electronic%20control%20weapon%20guidelines%202011.pdf](http://www.policeforum.org/assets/docs/Free_Online_Documents/Use_of_Force/electronic%20control%20weapon%20guidelines%202011.pdf)

Strategies for Resolving Conflict and Minimizing Use of Force  
[http://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/strategies%20for%20resolving%20conflict%20and%20minimizing%20use%20of%20force%202007.pdf](http://www.policeforum.org/assets/docs/Critical_Issues_Series/strategies%20for%20resolving%20conflict%20and%20minimizing%20use%20of%20force%202007.pdf)

# **Oakland Police Department Crowd Control Policy and Practices**

The Oakland Police Department is dedicated to facilitating peaceful protests, demonstrations, and marches. Protecting the community's first amendment rights to free speech and assembly is our priority. Many protests and gatherings remain peaceful and the majority of participants are non-violent, however; in the event a demonstration turns violent and/or destructive, the Oakland Police Department understands the important role we must play in protecting life and property. We are committed to crowd control response that is balanced and constitutional. We have implemented policies, procedures and training that reflect our dedication to this mission.

## **Policy**

- Required planning meetings with all possible stake holders before event.
  - Coordinate with City Attorney and District Attorney to evaluate current crowd control case laws.
  - Ensure criminal and professional standard investigators are present during crowd control events in case of an officer misconduct incident occurs.
- The Department Crowd Control Coordinator Position: This individual is responsible for all training, planning and policy compliance issues involving crowd control.
- All members strictly adhere to the Incident Command System.
- The Incident Commander will follow a set sequence of events when encountering any crowd control situation:
  - Negotiate: Trained negotiators will speak with protest leaders to help control the crowd and future outcomes
  - Announcements: When negotiations fail, then multiple announcements are made with sound vehicles for dispersal.
  - Dispersal: Skirmish lines are the preferred method of dispersal without having to use physical force.
  - Arrests: Those individuals who failed to disperse are encircled and arrested for failure to disperse.
- Arrests: If an arrest is made, there must be specific articulable information for the arrest and the chain of custody must be maintained when making each arrest. The passing of prisoners from officer to officer has caused criminal cases to be lost because no one could tell who made the original arrest.
- Citations: Once arrests are made, officers will make every effort to cite out individuals at a safe location near the place of the arrest. A mobile booking station is set up to process prisoners. Subjects with no identification, warrants or with a felony arrest are taken into physical custody. This has significantly reduced the amount of time to process prisoners and reduced complaints.

- Use of Force: There are strict controls on the use of force.
  - Baton jabs cannot be used to simply move a crowd. The use of a baton or any other weapon must meet the standards of the department's use of force policy.
  - Special Impact Weapons have a higher threshold for use in crowd control situations.
  - Gas can only be deployed when ordered by the Incident Commander.
- Quarterly crowd control reports: These reports are completed by the Crowd Control Coordinator and distributed to all commanders. A redacted version is published for the public on the Department's website.
- Mutual Aid: All mutual aid agencies must report to the staging area and will not self-deploy.
  - Mutual aid agencies are briefed on OPD policies and procedures for crowd control.
  - Each outside agency team is assigned an OPD officer to act as a radio operator and pathfinder.
  - An inventory of outside agency less lethal weapons and munitions is conducted at the staging area before and after the event
  - Mutual Aid agencies are usually assigned force protection and force projection assignments. If they are given front line skirmish line positions, then they will be used as a blocking force while OPD personnel make the physical arrests.
- After action reports are completed for major events so they can be used to measure performance and improve responses to the next event.

## **Practices**

- All crowd control ops plans, briefings and after action reports are stored on a secure server. All crowd control training plans, policies, practices and documents are all housed in this box account. It is maintained by the crowd control coordinator.
- All officers receive training once a year and commanders receive training at least 2 to 3 times a year on policy, lessons learned and table top exercises.
- Commanders are specifically trained on proper gas plans and those plans are communicated to the gas deployment officers. The number of devices, the type of canister and location of deployment must be determined and communicated before deployment.
- Mobile Field Forces use a variety of vehicles to deploy from during crowd control. Armored vehicles are not deployed for crowd control. If there is a specific threat, than an armored vehicle is parked away from the protest and hidden from view. Some of the vehicles deployed during a protest are the following :
  - Ten passenger vans



- Large SUV's
  - Motorcycles
  - Bicycles
  - Patrol cars
  - Polaris sound vehicles
- Undercover officers are used to safely facilitate the arrest of violent individuals during large crowd demonstrations.
  - They are assigned their own arrest/safety team.
  - Undercover officers do not take any direct action or make arrests.
  - They coordinate the arrest of offenders who have completed acts of vandalism or violence.
  - As a practice, the arrest team waits until the individual is away from the crowd to make the arrest. This prevents members in the crowd from lynching the prisoner or starting a flashpoint within the crowd.

**Testimony**  
**National Organization of Black Law Enforcement Executives (NOBLE)**  
**Before the President Barack H. Obama Task Force on 21<sup>st</sup> Century Policing**  
**January 28, 2015**

Co-Chairperson Charles H. Ramsey, Co-Chairperson Laurie O. Robinson, and members of the Task Force, we bring you greetings on behalf of the Executive Board and members of the National Organization of Black Law Enforcement Executives – NOBLE.

It is an honor for NOBLE to provide written testimony on specific recommendations for the task force to consider in the following areas:

**Policy and Oversight**

- The role of police leadership (first-line, supervisory, managerial, and senior command)
- Influence of police culture
- Civilian oversight
- Early intervention systems
- Disciplinary systems
- Use of force
  - Policy
  - Reporting and investigations
  - Review and oversight
- Handling mass demonstrations and the use of military equipment
- Civil rights enforcement
- Research and data collection

**Technology and Social Media**

- Managing evolving technology and policy development
- Less than lethal technology
- Body cameras
- Social media
- Legal and constitutional issues
- Youth engagement

NOBLE's testimony comes from the perspective of a Law Enforcement Organization that has been in existence for nearly 40 years. NOBLE has nearly 60 chapters and represents over 4,000 members worldwide that is comprised of chief executive officers and command-level law enforcement officials from federal, state, county, municipal law enforcement agencies, and criminal justice practitioners. NOBLE's mission is to ensure EQUITY IN THE ADMINISTRATION OF JUSTICE in the provision of public service to all communities, and to serve as the conscience of law enforcement by being committed to JUSTICE BY ACTION.

## **Task Force Recommendations**

### **The Role of Police Leadership (first-line, supervisory, managerial, and senior command)**

Real and sustained reforms require on-going discussions, input, and commitment from police leadership. They must understand that positive police/community relations hinge on their ability to support each other in this engagement that benefits all. Any initiative that is started must have those in high command at the forefront of the change, which starts with basic education of the various roles. The leadership is responsible for internal education to ensure that everyone is on the same page with the mission, vision and values of the organization (that includes the union representation). At the same time, the organization has a responsibility to educate the public on what law enforcement does in order to begin the journey of building trust with the community.

NOBLE's recommendation is that the task force should expound on the correlation between a professionally trained supervisory staff and positive community relations. In essence, someone must ensure that the policies, regulations and interactions designed for improving relations with the community are followed and that there are consequences for deficiencies. Thus with appropriate supervisory training, they can become appreciative of their vital role and learn the elements of how to be accountable supervisors. Secondly, it is recommended that departmental leadership and supervisory assessments be performed. Thirdly, NOBLE recommends mandatory training starting with first line supervisors be performed in the areas of critical strategic decision making, cultural awareness, and negotiation best practices. Executive management should consider managerial training to enhance visionary planning and employee succession.

### **Influence of Police Culture**

Because of how hard-wired police officers sometimes are, it is vital that they undergo extensive cultural awareness and cultural competence education to learn more about the communities they serve. There has to be a strong emphasis on how to keep the officers safe as well as the community. This can only be done by positive, comprehensive interaction between both factions which begins to build the trust that ensures a win-win for everyone. When officers realize that their safety is tied to their positive interaction with the community, they will begin to understand what's in it for them - *their personal safety*.

The cultural shift must begin with the top command personnel which sends a clear positive message to ensure buy-in from the rank and file as well as the community. All training must be hands-on rather than online. NOBLE recommends behavioral / psychological assessments every 5 years to assist in determining opinions, environmental influences, and departmental influences. Secondly, there should be a

reassessment of field training officers assigned to new recruits. Lastly, there should be a post reassessment that would include the above referenced training to drive home the mission and goals of community policing throughout respective departments.

### **Civilian Oversight**

NOBLE recommends collaborative training and education to enhance the transparency of police operations. Oversight should be inclusive of law enforcement, civilian, corporate, and multiple disciplines in order to arrive at best practices for operations, hiring, retention, training, efficiency, etc. NOBLE does not recommend total civilian or total sworn police oversight.

### **Early Intervention Systems**

Early intervention assessments should be inclusive of recommendations from a behavioral psychologist team. Early intervention may necessitate psychological testing, drug testing, and situational exercises dealing with problematic scenarios. Proactive assessments every 5 years or so may identify problems early rather than responding with early warning mandates after a negative incident involving an employee occurs. Problems indicated could prompt specific training and correction measures.

### **Disciplinary Systems**

NOBLE recommends continued progressive disciplinary measures. The creation of a national disciplinary database is recommended that could be shared between law enforcement HR professionals to assist in mitigating negative hiring of problem employees.

### **Use of Force**

**Policy** – It is recommended that the law department conduct a periodic review regarding the use of force policy to include demographic data from use of force incidents (even those from less than lethal force). **Review and Oversight** – A review of periodic policy recommendations could include public town hall meetings to solicit public input and dialogue before a policy becomes final. The review process should always lend itself to transparency and include community representatives. **Reporting and Investigations** – NOBLE recommends the consideration of the revaluation of sample use of force cases (by outside agencies). Revaluation would redact names of individuals involved. A process using the same or similar disciplinary and correction standards could determine irregularities in findings and subsequent recommendations on training and disciplinary/corrective measures.

The use of force policy should provide a provision for an external investigation to ensure greater transparency and trust with the community.

### **Handling Mass Demonstrations and the Use of Military Equipment**

The Pentagon militarization of police program was authorized by Congress in 1990 to help fight drugs, with terrorism fighting a more recent objective. The program has handed out more than \$5.1 billion in military property since it started, primarily as a way to get rid of equipment it no longer needs. Equipment, much of it non-tactical gear such as sleeping bags and filing cabinets, is provided first-come, first-serve. NOBLE feels that training is a key component of ensuring the correct application of this type of resource. This training would be mandated by the Department of Justice. The training would include best practices for the use of military equipment as well as tactical measures utilized. Rules of engagement should be evaluated by the Department of Justice and local law enforcement agencies.

Mass demonstration training should be collaborative to include College Police and local agencies.

### **Civil Rights Enforcement**

NOBLE recommends that training be administered by the Department of Justice to include historical civil rights incidents and responses. Additionally, there should be an orientation on non-violent methodology.

### **Research and Data Collection**

NOBLE feels that there are collaborative opportunities between the public, private, and educational institutions. A key resource within African American communities is Historically Black Colleges and Universities (HBCUs) that can assist with research and data collection as well as strategic solutions once data is analyzed.

### **Technology and Social Media**

NOBLE feels that technology can be leveraged to support the effective implementation of community policing and ensure maximum transparency to the public. Through technology, partnerships with communities can be strengthened in the areas of problem-solving and partnership initiatives. Likewise, there is an important role in applying technology in improving the effectiveness of law enforcement training.

Listed below are technology recommendations:

- Requirement of body cameras for law enforcement officers.
- Deployment of various social media platforms to allow law enforcement departments to better communicate and interact with local residents.
- Use-of-Force and Firearms Training Systems.

### **Managing Evolving Technology and Policy Development, Less than Lethal Technology,**

**Body Cameras:** Law enforcement must embrace 21<sup>st</sup> century technology that reduces human error and ensures consistent application and enforcement of the law.

Instruments such as body cameras are a great equalizer for objectively capturing the action of officers in the performance of their jobs. When protocol is followed, it reinforces professionalism of the officer. When it is not followed, it highlights the deficiencies in training and education. NOBLE recommends the establishment of partnerships with leading technical institutes of higher learning, leading technology companies, and governmental entities to assist in guiding and shaping law enforcement technology (in all areas) and policy. Additional recommendations are to ensure diversity in sourcing suppliers to deliver the technology products and services.

**Social Media:** It is critical that at the highest levels of law enforcement that social media is embraced and leveraged. NOBLE recommends the development of partnerships with IT, public relations, marketing professionals, colleges and universities to assist in developing social media platforms, best practices, and policy.

**Legal and Constitutional Issues:** NOBLE proposes that agencies receive training and orientation from law departments on a regular basis, particularly post state legislative sessions.

**Youth Engagement:** NOBLE recommends sustainable collaborations with youth advocacy and mentoring groups in local jurisdictions. Organizations we propose for consideration are Boys and Girls Clubs, 100 Black Men of America, Big Brothers Big Sisters, Pan-Hellenic Councils, and various other local and regional mentoring organizations. Presently, NOBLE partners with many of these organizations to deliver ***The Law & Your Community Program*** that is funded by the Department of Justice Community Oriented Policing Services Office.



# Cleveland State University

*engaged learning*

Maxine Goodman Levin College of Urban Affairs  
*Office of the Dean*

1/24/2014



Dr. Ronnie A. Dunn  
Cleveland State University  
2121 Euclid Avenue, UR 314  
Cleveland, Ohio 44115-2214

Mr. Ronald L. Davis, Executive Director  
President's Task Force on 21<sup>st</sup> Century Policing

Dear Mr. Davis and Task Force members,

It is a great honor, and with a sense of obligation and humility that I graciously accept the invitation of the President's Task Force on 21<sup>st</sup> Century Policing to provide written testimony on Policy and Oversight relative to policing in America. This is an area in which I have conducted a considerable amount of research, particularly on the issues of racial profiling<sup>1</sup> and civilian oversight of police.<sup>2</sup> I welcome this opportunity to share some of my thoughts and perhaps unique perspective and insights in this area, in that I am an African American male as well as an academic that studies issues that intersect race, policing, and the criminal justice system. I am a product of the Cleveland Public School system, an Air Force veteran, and earned my doctorate degree at Cleveland State University where today, I am an associate professor of Urban Studies. I have conducted research in this subject area for the past 17 years, completing my dissertation on racial profiling, and having conducted three separate studies of the Cleveland Police Department, which is currently negotiating a consent decree with the Department of Justice as a result of a "pattern and practice" investigation, and is at the center of the national debate regarding policing in America, particularly relative to African-Americans and other minorities. Given this experience, I would like to offer recommendations in three substantive areas: racial profiling or bias-free policing; federal grant funding of state and local police initiatives; and community engagement for ongoing police reform efforts.

First, I would recommend the passage of federal legislation on racial profiling, consistent with the provisions entailed in the End Racial Profiling Act. The most frequent contact the average citizen has with the police occurs as a result of a traffic stop. Nationally, approximately 40 million persons 16 years of age or older had a face-to-face encounter with

police in 2008, the most recent year for which this data is available, 59 percent of which resulted from a traffic stop or accident. Although allegations by minorities, particularly blacks, that they are singled out by law enforcement for disparate treatment is not a new phenomenon, as evidenced by the 1968 Kerner Commission Report, the increased use of "pretextual stops" by law enforcement since the mid-1980s as a tactic in the "War on Drugs," has exacerbated the already historically troubled relationship between police and the African-American community and brought racial profiling to the forefront as one of the most contentious social and political issues confronting local law enforcement and public officials across the nation (Dunn & Reed, 2011).

Federal survey data between 2002 and 2008 shows that while black, white, and Hispanic motorists are stopped by police at similar rates, blacks and Hispanics are more likely to have their vehicles searched and receive a traffic citation than are white motorists.<sup>3</sup> The research literature has also consistently shown that minorities are no more likely and often less likely to be in possession of drugs, guns, or other forms of contraband than are whites. Skolnick and Fyfe<sup>4</sup> identify routine traffic stops, and stops of suspicious vehicles as two of the most frequent and "potentially violent situations," (PVs) between police and citizens. Central to addressing the current crisis of police use of deadly force against unarmed citizens is to monitor, and where it is not in response to a specific, known, and articulable violation of local, state, or federal law, reduce the frequency of these involuntary police-citizen interactions.

As the nation has witnessed a moderating of some of the more harsh criminal justice policies as the "crack epidemic" has waned, and some reforms have occurred in the courts, e.g., reduction in sentencing disparities, and incorrections, e.g., community reentry for ex-offenders, such as Ohio's Collateral Sanctions Reform Bill HB 337, a corresponding shift in policing, the point of entry into the criminal justice continuum, has not occurred. This can be achieved by passage of federal legislation that explicitly prohibits the use of race, ethnicity, gender identity, sexual orientation, or religious affiliation as the basis to target, stop, investigate, question, or detain a person, be they motorists, pedestrian, or cyclists, without articulable probable cause that such person has committed an unlawful offense. Such legislation should also include a provision requiring the uniform collection of social demographic data on all involuntary police-citizen contacts, not only those resulting in a traffic ticket or misdemeanor citation. This will help to determine the magnitude of those that are not formally sanctioned, but effectively diverted from the criminal justice system by being given a warning or questioned and searched, yet for which no record exists. This data should then be collected, analyzed, and reported annually to the appropriate local governmental entity, and the state and U.S. Attorney General's Office. Federal funding to local and state law enforcement agencies can be used to incentivize the enforcement of this legislation and provide support and remedial training for agencies found to be in non-compliance with federally established guidelines.





Many of the criminal justice reforms that have been recently enacted across the country have primarily come about as a result of the 2007 economic recession and the unsustainable cost of prisons and corrections on state budgets. And while the President has officially announced the end of the War on Drugs as is traditionally done when combat operations cease in a foreign war, funding strategies such as the Brennan Center For Justice's, "Success-Oriented Funding"<sup>5</sup>, can be used to shift from non-effective, counter-productive law enforcement approaches that have evolved over the past 30-plus years under the "War on Drugs" regime, which have not enhanced public safety, but led to the U.S. being the world leader in incarceration of its citizens. By applying this Success-Oriented Funding strategy to the federal government's primary criminal justice funding source, the Edward Byrne Memorial Justice Assistance Grant (EJAG) program, resources can be redirected to help offset some of the adverse effects of policies and practices such as the 100-to-1 sentencing disparities between crack and powder cocaine, and mandatory minimum drug sentences, which has led to the disproportionate incarceration of minorities, particularly blacks and Hispanics, for low-level, non-violent drug offenses, and exacerbated the racial disparities within the nation's criminal justice system. Such an initiative will focus federal grant-funding on criminal justice performance measures of outcomes, such as the violent crime rate and the percentage of such arrest resulting in conviction, the percentage of misdemeanors adjudicated through a citation versus jail, and the percentage of drug offenders screened for addiction and treatment rather than funding local and state grant recipients that focus on outputs, such as the number of arrests, gun crime charges, and warrants. The former are more precise indicators of public safety than are the latter, which measure law enforcement/criminal justice activities.

Lastly, there is a need for creation of a toolkit for community engagement in ongoing police reforms. Since 2009, the US Department of Justice's Civil Rights Division has opened more than twenty investigations into police departments across the country. Not since the social unrest of the late 1960s and early 70s has the issue of police conduct and police reform been more at the forefront of the minds of law enforcement officials as well as the average American citizen. Clearly the Department of Justice's role in ensuring constitutional policing is paramount in guiding the reform efforts of law enforcement and their civilian leadership. As Sam Walker, Professor Emeritus of Criminal Justice, University of Nebraska stated in, *Civil Rights Investigations of Local Police: Lessons Learned*<sup>6</sup>, "No police department should be in a position where it can be sued by the Justice Department, because past cases make clear what is expected of them to achieve professional, bias-free and accountable policing."

Whereas law enforcement have clear guidance and a roadmap for how to promote best police practices, communities and the general public often have a much more challenging and daunting task before them when they find themselves in a situation where their city's police practices have been placed under DOJ scrutiny. Often this scrutiny comes on the heels of high-



profile negative police-citizen encounters. Communities may be angry, frustrated and confused, and feelings are raw on all sides. When a DOJ pattern and practice investigation is initiated and findings are issued, these same communities, who may have long felt disengaged from their police departments at best and are distrustful and cynical about their departments at worst, are suddenly thrust into the spotlight and are being asked to step up and provide input and feedback on how they want to be policed. These communities often lack insight into the internal workings of their police department and they may lack knowledge about the basic structures of police accountability. In short, communities know something is terribly wrong, but they are not sure how to engage in the process of fixing the problem. A toolkit on "Community Engagement in Police Reform" could cover basic accountability measures and help communities quickly find a sense of direction and purpose in working with their police departments to implement positive changes.

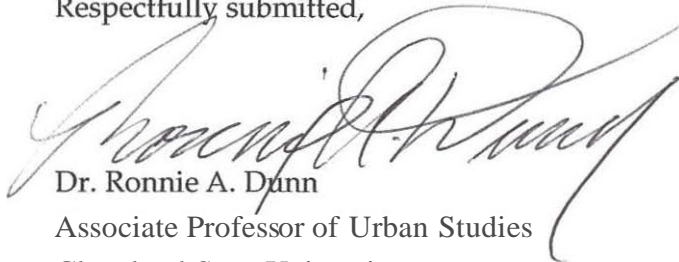
The need for such a guide has become readily apparent to the residents of the City of Cleveland, Ohio who have recently inserted themselves into the police reform process on the heels of a US Department of Justice pattern and practice investigation into the use of force by the Cleveland Division of Police. After a DOJ findings letter was issued on December 4, 2014, that determined the Cleveland Division of Police engaged in a pattern and practice of unconstitutional policing with respect to the use of force, the community quickly learned that its voice mattered in the reform process and that its concerted engagement would be necessary to help plan how to monitor the efficacy and sustainability of any subsequent reforms. Yet, instead of being able to rely on an organized blueprint, stakeholders have had to engage in weeks of self-study, research and community consultations to gain a foothold and a modicum of understanding as to what the consent decree process is like and where the community would potentially fit in. A toolkit that helps to gather, delineate, and streamline information about the DOJ intervention process under 42 U.S.C. 14141 and other relevant statutes would be indispensable to other cities who may find themselves in a similar situation.

The Department of Justice together with communities that have undergone a federal consent decree process or other DOJ intervention should work together to compile a road map or toolkit that sets forth best practices for navigating the community engagement aspect of implementing and sustaining police reforms. The toolkit could, for example, be entitled "Principles for Promoting Community Engagement in the Police Reform and Accountability Process." The document would 1) explain the basics of DOJ intervention; 2) set forward the relevant laws and statutes governing DOJ's involvement in police reforms; 3) offer a historical overview of DOJ initiated reform efforts; 4) provide profiles of the different types of community engagement models that have emerged in various cities and 5) explore the challenges and opportunities involved in bringing the community's voice to bear in efforts to improve police practices and accountability measures across the country. The report could include testimonials

from DOJ officials, community members and diverse stakeholders, as well as police line officers and supervisory staff, and local public officials.

The toolkit should explore models of community engagement such as those in Los Angeles, Cincinnati, Seattle, Portland and other cities that have come under DOJ guidance. The report should include a reference and resource section that would provide guidance and examples for community groups to use to help engage diverse community safety stakeholders who can in turn seek to amplify the voices of impacted communities. The toolkit should provide stakeholder groups with concrete examples of survey tools; guides for community dialogues; ideas for holding panels and events on police policies and procedures; methods of gathering community input on how communities would like to be policed; and procedures for neighborhoods to work together with police to create neighborhood safety plans, etc. The toolkit would assemble the combined knowledge of various stakeholders who have been involved in police reform efforts from various sectors. The overall goal of the toolkit would be to provide a roadmap for community engagement in reform efforts and well as sustained involvement in community oriented and problem-solving oriented policing. Collectively, I believe these recommendations will help advance effective, constitutional, community-oriented policing, which will strengthen the social fabric of our nation and the principles of democracy.

Respectfully submitted,



Dr. Ronnie A. Dunn  
Associate Professor of Urban Studies  
Cleveland State University

---

<sup>1</sup> Ronnie A. Dunn and Wornie Reed, *Racial Profiling: Causes & Consequences*, 2011. Dubuque, IA: Kendall-Hunt Publishing Co.

<sup>2</sup> Ronnie A. Dunn, "Race and the Relevance of Citizen Complainants Against the Police," 2010. *Administrative Theory & Praxis*, 32, 4, 557- 577.

<sup>3</sup> Christine Eith and Matthew R. Durose, *Contacts between Police and the Public*, 2008. U.S. Department of Justice. Office of Justice Programs : Washington, D. C.

<sup>4</sup> Jerome H. Slotnick and James J. Fyfe, *Above The Law: Police and the Excessive Use of Force*, 1993. New York: Free Press.

<sup>5</sup> Inimai Chettiar, Lauren-Brooke Eisen, Nicloe Fortier, and Timothy Ross, *Reforming Funding to Reduce Mass Incarceration*, 2013. New York: The Brennan Center for Justice, New York University School of Law.

<sup>6</sup> Samuel Walker, 2013, *Civil Rights Investigations of Local Police: Lessons Learned*, Critical Issues in Policing Series, Washington, DC: Police Executive Research Forum.

[http://www.policeforum.org/assets/docs/Critical\\_Issues\\_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf](http://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf)

**OIR**  
GROUP

MICHAEL GENNACO  
[Michael.gennaco@oirgroup.com](mailto:Michael.gennaco@oirgroup.com)  
7142 TRASK AVENUE  
PLAYADELREY, CA 90293  
323 8210586

January 26, 2015

Ronald L. Davis  
Executive Director  
President's Task Force on 21st Century Policing

Charles H. Ramsey  
Co-Chair  
President's Task Force on 21st Century Policing

Laurie O. Robinson  
Co-Chair  
President's Task Force on 21st Century Policing

Re: President's Task Force on 21st Century Policing: Policy and Oversight

Dear Messrs. Davis and Ramsey and Ms. Robinson:

Thank you for your invitation to submit written testimony on the topic of Policy and Oversight for consideration by the President's Task Force on 21st Century Policing.

My professional experience has shaped my impressions of oversight from a few different perspectives. I served for ten years as a trial attorney for the Civil Rights Division of the United States Department of Justice, with a focus on the investigation and prosecution of law enforcement officers for violations of federal law. I dealt with allegations of excessive force and false arrest in jurisdictions around the country. Subsequently, I served for six additional years in a similar capacity as an Assistant United States Attorney in the Central District of California, and eventually worked to create the first Civil Rights Section for the Office. Starting in 2001, I spent thirteen years as the head of a new model of full-time, independent civilian oversight entity for the Los Angeles County Sheriff's Department. Additionally, I have devised civilian oversight systems for a number of other law enforcement agencies, worked as a court expert to help develop remedial plans for Constitutional defects in policing, conducted independent reviews of critical incidents for police departments, and conducted independent audits for numerous law enforcement entities, with an emphasis on force, accountability, and related police practices.

I applaud President Obama for creating this task force in response to the recent crisis in American policing. Each of you also deserves acknowledgement and appreciation for your efforts in soliciting and evaluating recommendations for the advancement of stronger, more constructive relationships between law enforcement and the public. I fully support the sentiments and recommendations set forth by Brian Buchner, President of the National Association for Civilian Oversight of Law Enforcement ("NACOLE") in his January 9, 2015 correspondence to the Task Force. I write separately to advance additional thoughts and recommendations for your consideration. Because the Task Force was created under the President's Executive authority, my recommendations are centered on how the federal government can use its resources, expertise, and authority to assist in achieving President Obama's overarching objectives.

**Recommendation 1.: The federal government should give renewed emphasis to the value of robust civilian oversight, and should consider the existence of effective oversight when evaluating police agencies and designing remedial plans.**

Ensuring accountability and respect-based policing is primarily the responsibility of the local agencies that have the vast majority of law enforcement responsibility in this country. Each entity has its own policies and a significant measure of autonomy. Accordingly, each one relies on internal investigations and self-policing to ensure that its officers perform effectively and in keeping with Constitutional principles. As set out in more detail in Mr. Buchner's letter, experience has demonstrated that effective and constructive civilian oversight can provide an invaluable resource for these critical functions. Rigorous independent review adds an obvious level of accountability and public trust; just as importantly, it can introduce an outside perspective that strengthens a police agency's own process. While the call for civilian oversight has grown steadily louder in the aftermath of recent incidents, the large majority of jurisdictions still lack formal and consistent outside review.

The "best" approach to civilian oversight continues to be a subject of debate. In part, this is because so many different factors influence what particular agencies and communities need and can sustain. Nonetheless, there is general agreement that for oversight to be meaningful and effective, three critical precepts must exist. First, the oversight entity must have unfettered access to the agency's internal reports, investigations, related documents, and decision-makers. Second, civilian oversight should have the ability to interface and provide input into police agency decision-making at both the "micro" level of individual cases and the "macro" level of policy development and systemic reform. Finally, civilian oversight should have the authority to report to the public about its findings and recommendations, consistent with the limits of law.

The Task Force should recommend that the federal government use its influence and authority over local law enforcement to encourage the initiation of civilian oversight in those jurisdictions that have none, and to strengthen oversight where it has proven to

be ineffective. The federal government should also consider providing fiscal resources to assist local entities that are interested in creating or enhancing existing civilian oversight.

In addition to using the "bully pulpit" and federal resources to promote civilian oversight among its local law enforcement partners, the Civil Rights Division should also routinely consider the presence (or absence) of effective oversight in investigating whether a particular police agency has a pattern or practice of unconstitutional policing. Federal investigators can gain considerable insight from oversight entities in both the evaluation phase, and – if warranted – the subsequent remediation phase. The Civil Rights Division should also consider whether civilian oversight should serve as part of the remedial solution in appropriate cases.

**Recommendation 2: The federal government should solicit civilian oversight perspectives in considering or developing progressive police practices.**

To its credit, the federal government has partnered with national police organizations to formulate white papers on a range of topics related to progressive policing. For example, the COPS office, under the leadership of Mr. Davis and his predecessors, has produced papers that provide local agencies with a valuable resource in tackling issues such as body-worn cameras. While this is an admirable venture, the development of such papers has relied to date exclusively on input from police executives. Oversight practitioners that specialize in police practices represent a different stakeholder perspective that could diversify and enhance the finished product. Accordingly, the federal government should solicit and include the contributions of the oversight community in developing such resource materials.

**Recommendation 3: The federal government should incentivize local law enforcement to reduce the use of force when possible, and to develop robust investigative and review processes when force incidents do occur.**

Police officers are not simply authorized to use force; they have a responsibility to do so in order to protect themselves or third parties and to carry out their law enforcement duties. However, as recent national events have demonstrated, the use of force by police can generate a significant amount of controversy and public distrust. As a result, it is incumbent upon local agencies to reduce the likelihood that police officers will resort to force when other means of handling the situation are available. As a result of traditional training and paradigms, sometimes police officers have used force because they can, even though there may have been other ways to resolve or defuse the encounter. Progressive police agencies have devised "force prevention" policies and training that create a paradigm shift toward alternatives, without compromising public or officer safety. These concepts should be disseminated and fostered by federal leadership.

In addition, all local agencies should devise internal mechanisms to ensure a robust, timely and objective investigation into all force incidents when they do occur.



Each force incident is not only a significant exercise of police power that requires accountability, but also a potential learning opportunity for involved officers and the agency as a whole. Local law enforcement should embrace the opportunity to pursue thorough and wide-ranging evaluations, rather than settling for the "bottom-line" inquiry into whether the force was in-policy. Accordingly, *police* leadership should formally assess each force incident through the lenses of individual performance, policy review, quality of supervision, tactics, and equipment. The federal government can and should play a leadership role in incentivizing local law enforcement agencies to devise such protocols, and should also provide technical assistance for those interested in doing so.

**Recommendation 4: The Task Force should consider the roles that prosecutorial and disciplinary review authorities play in accountability, and should evaluate the potential value of independent civilian oversight in those arenas.**

While the responsibility for holding police officers accountable for most types of misconduct allegations generally rests with the leadership of the police agency, the criminal review of an allegation of excessive force lies primarily with the local prosecutor's office. However, there is virtually no "oversight" of these prosecutorial decisions. While the federal government has involved itself under its parallel authority to criminally investigate Constitutional color of law violations, there are finite available resources. Accordingly, only the most egregious decisions *can* be revisited. And, more importantly, a federal civil rights prosecutor has much more limited statutory authority for the redress of excessive force violations.

As I expect the Task Force will hear during its listening sessions and review of recent literature, the relatively unchecked discretion of local prosecutors has contributed greatly to public concerns about the legitimacy of criminal investigations into police misconduct. While some entities have begun to consider confining that discretion or removing that authority entirely from local prosecutors, another approach would be to encourage the formation of independent civilian oversight *as* part of those prosecutorial decisions. Independent civilian oversight of policing is clearly underdeveloped, but the role of civilian oversight in prosecutorial decisions is virtually nonexistent. Because many of the same considerations for civilian oversight also apply to the local prosecutor's office, the Task Force should encourage local prosecutors to consider the advantages of effective civilian oversight in providing an independent register as those offices evaluate allegations of police misconduct.

The role that post-disciplinary processes play in police accountability has also not received sufficient attention in the recent national discussion and debate. Virtually all jurisdictions provide a process for disciplined or terminated police officers to challenge their discipline. During these processes, disciplinary decisions made by police leadership are often undermined or undone by arbitrators, civil service boards, or other post-disciplinary entities. As with prosecutorial decisions by local entities, there is virtually no civilian oversight of these critical and influential decisions. More


consideration should be given to providing oversight of these entities and ensuring a higher level of transparency to these post-disciplinary processes.

**Recommendation 5: The Task Force should consider the potential applicability of effective civilian oversight to federal law enforcement agencies.**

Federal law enforcement agencies have virtually no tradition of creating or embracing civilian oversight over their policing functions. While there are internal review entities for force incidents, many local law enforcement agencies significantly surpass the federal level of transparency and civilian involvement in developing policy, reviewing cases, and providing input into critical incidents such as officer-involved shootings. The Task Force should recognize this difference in paradigms and recommend that federal law enforcement *leadership* and other stakeholders *consider* increasing civilian oversight and transparency with regard to these functions. If the federal government hopes to promote greater oversight, transparency, and citizen involvement at the local level, one impactful way to accomplish this would be through example.

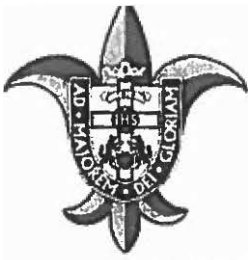
I appreciate the opportunity to advance these suggestions as you carry out the President's important mission of improving national policing. Please feel free to contact me if further input of any kind would be useful. I wish the Task Force the best in addressing these critical issues.

Very truly yours,



Michael Gennaco  
Principal, OIR Group





100 N. Tucker  
St. Louis, MO 63101-1930  
Phone 314-972766  
www.slu.edu

SAINT LOUIS  
UNIVERSITY

School of Law

January 28, 2015

President's Task Force on 21st Century Policing  
US Department of Justice  
Office of Community Oriented Policing Services  
145 N Street NE  
Washington, DC 20530  
via email PolicingTaskForce @usdoj.gov

Dear Co-Chairs Ramsey and Robinson, and members of the Task Force:

Thank you for the opportunity to provide written testimony on the issues of policy and oversight. I am a law professor at Saint Louis University School of Law. I teach Human Rights Law, Racism and the Law, and beginning this fall I will be teaching Constitutional Law as well. I have been involved in the demonstrations as a protester, organizer, legal observer, and policy advocate.

After testifying alongside Mike Brown's parents and Ferguson activists on the world stage before the United Nations in Geneva, the responses from UN officials made it apparent that the state of policing and the criminal justice system in the United States has damaged America's moral standing in the global community. During the hearing, multiple Committee members questioned the United States government delegation with shock about its failure to put into place effective accountability mechanisms or ensure equal application on the law. After the hearing, the UN Committee Against Torture officially expressed its concern about the "numerous reports of police brutality and excessive use of force by law enforcement officials, in particular against persons belonging to certain ethnic groups."<sup>i</sup> It also expressed its "deep concern" about "the frequent and recurrent shootings or fatal pursuits by the police of unarmed black individuals" and it noted the "alleged difficulties of holding police officers and their employers accountable for abuses."<sup>ii</sup> The U.S. is expected to answer these concerns in the coming months pursuant to the treaty compliance review process.

The UN is right to be appalled. This misconduct takes place in the context of a federal prison population that is 37.5% black, and a combined state and federal prison and jail population that is nearly 43% black, when blacks make up only 13% of the general population.<sup>111</sup> The United States currently makes up 5% of the world's population, but 25% of the world's prison population.<sup>1v</sup>

I hope that this written testimony and the others will provide you with enough information to recommend meaningful changes to the President of the United States. I remain hopeful that the

United States can become a beacon for human rights and democracy around the world. For this to happen, our policing and criminal justice community must become a force for justice, not injustice, and healing, not racial division, in our lifetimes.

In this short written testimony, I plan to first review the current state of (1) The culture of policing, and (2) use of force standards. I also provide brief recommendations for each.

(1) Policing Culture in the United States of America-Blacks not as Citizens but as Enemies and Targets

In early November of 2014, I testified before the United Nations Convention Against Torture along with Mike Brown's parents and activists from the St. Louis region. We left for Geneva outraged not only by the behavior of the local, state, and federal government officials responsible for the systematic racial profiling and physical brutalizing of American citizens. We were also outraged by the policing culture that not only justified this behavior, but indeed celebrated it. In our case, we noted not only the killing of Mike Brown. We also noted failure to remove his body for over four hours from the street. We also noted the wearing of "I am Darren Wilson" wristbands, wristbands that continue to be worn openly by police officials as of today, January 28, 2015." We also noted the common practice of smearing the name of deceased victims, as Ferguson Police Chief Thomas Jackson demonstrated by releasing a provocative video of Mike Brown unrelated to the incident involving Darren Wilson.<sup>vi</sup> Through these actions and countless others, including its draconian response to the demonstrations, our local police departments have treated citizens of color with more derision than any foreign enemy on a battlefield or in a theater of war.

Accordingly, we must acknowledge that the move from community policing to "hot spot" policing tactics and the use of military language such as waging a "war" on drugs has had a negative effect on our policing cultures. The community oriented policing services division of the department of justice has not effectively imbued its vision of community policing into police departments around the country. Many departments continue to recruit former military veterans without retraining them to properly engage with community members in a non-military setting. Some have PTSD and think they are on the streets of Iraq when they are on the streets where our loved ones live. Some see every person of color in these neighborhoods not as citizens but as targets or enemy soldiers where they have to kill them first or be killed. We saw this demonstrated recently in Miami, Florida, where police unapologetically used the faces of Black Men from the community as target practice in their training modules."

These war zones of the mind are then reinforced by programs like the Federal government's 1033 program. Under this program, excess military equipment like assault rifles and mine resistant tanks are provided to local law enforcement agencies upon request with little oversight. During their response to the Mike Brown protests, the Ferguson police had more equipment than many soldiers in Iraq had, only they did not have the specified training. So they ran around like little children with new toys, playing tag or paintball with people's lives. This also affects day to day policing. Where no reasonable adult would believe that a fleeing figure who has been shot is coming their way, or a nearly strangled person is about to unleash force, a soldier on the battlefield must always veer on the side of killing because they are constantly engaged with

enemy soldiers who will kill them at any turn. When translated in our neighborhood, in the context of stereotypes of black criminality, this facilitates interpretations of the black body as a perpetual threat.

#### Recommendations:

- Create Financial Penalties for Police Departments that Engage in Racial Profiling: Serious proposals to end harmful practices by government agencies attach funding penalties, the loss of licensing, or the merger of departments as consequences for the lack of compliance. No one has yet proposed this type of firm commitment to ending racial profiling in the United States. Racial profiling creates moral decay in our police departments and facilitates dehumanization and brutality. This must be addressed using financial penalties.
- End the 1033 Program: Giving police high level military equipment without training promotes irresponsible usage. The alternative of training police to use the deluge of military equipment they receive serves to further inculcate the militarized culture of an occupying army against a citizenry they plan to attack. The transfer of this military equipment to state and local police should end.
- Create Federally Operated Oversight Mechanisms with Subpoena Power and the Ability to Provide Remedy: Civilian Review Boards established around the country have had limited success in changing policing culture, as demonstrated by the current crisis taking place in cities where these mechanisms already exist. These instruments are easily rebuffed by police departments that can refuse to comply or refuse to implement penalties based on their own discretion. Further, these mechanisms fail to center the victims of the brutality and provide redress for them. These instruments should have subpoena and enforcement power, and should provide remedies for victims.
- Mandate Personal Liability Insurance for Police Officers: Current proposals only address extreme cases of police violence that end in the killing of victims. And in civil cases, police are generally indemnified from financial penalty by their departments, at great public cost. Mandatory insurance with base premiums paid by cities will save money, and also ensure that premiums will rise for those who continuously engage in police misconduct that raises the probability of civil suit, perhaps providing them a financial incentive to refrain from misconduct.
- Provide Citizens with the Right to a Hearing with any Officer in the Aftermath of a Police Interaction: This will promote the dignity of citizens and ensure that officers engage in only justified policing activity.

#### (2) Use of Force Standards

Many around the country reacted with outrage upon learning that in the Mike Brown case, Prosecutor Robert McCullough's office used Missouri's anachronistic and unconstitutional use of force statute to give Darren Wilson an advantage in the grand jury process. The Missouri use of force statute would potentially give an officer the ability to use deadly force to subdue someone suspected of a nonviolent felony, for example killing someone who is suspected only of passing a bad check would be allowable under that statute.<sup>viii</sup> The Attorney General of Missouri has acknowledged that the state's use of force statute does not comply with the constitution as interpreted by the United States Supreme Court in *Tennessee v. Garner* in 1985.<sup>1</sup> This apparently is not an aberration. Other states around the nation currently have use of force statutes that brazenly flout the rulings of the United States Supreme Court.

I emphasize the use of force standards because they have the power to mute other reform efforts. For example, the President of the United States and others have recommended that police around the country use body cameras in an effort to provide more evidence during violent police interactions. I have already voiced my objection to this proposal on both privacy grounds, and my fear that the evidence gathered from these cameras will be used to incarcerate even more black and brown citizens for small "broken windows" policing violations.<sup>x</sup> Additionally, as the Eric Garner decision demonstrated, more evidence will make no difference if laws allow police to kill without reasonable justification. Indeed, as these videos proliferate, more incidents of police violence may take place as other police have video records of the type of violence that they can engage in with impunity.

#### Recommendations:

- Engage in litigation to ensure all states comply with constitutional standards: This is the bare minimum. The department fails to fulfill its mission when it allows the rulings of the United States Supreme Court to be degraded by local legislatures. This is less a question of morality than systematic integrity, and the willingness to defend the constitution of the United States of America.

- Create standards in compliance with UN human rights standards for Policing Assemblies and Use of Force: The Eighth United Nations Congress adopted its "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials" in 1990.<sup>xi</sup> It states that law enforcement should not use firearms against people unless less extreme means are insufficient, and should not seek to kill people unless strictly unavoidable to prevent loss of life. It also states that force should not be used to disperse unlawful assemblies, or the least amount of force possible should be used.

- Disallow the use of Deadly Force for Minor Violations: In part, the moral abhorrence of the killing of Eric Garner for selling loose cigarettes and Mike Brown for an interaction that began with Jay-walking results from the fact that it flies in the face of all notions of proportionality. Deadly force should only be allowed when an arrest involves a felony or serious crime.

- Provide Citizens with the Right to a Hearing with any Officer who has Used Force against them: This will increase the dignity of citizens and promote the responsible use of force by police officers.

#### *Conclusion*

Upon our return from Geneva, we felt both legitimized by the international community, and saddened that we had to travel halfway across the world to have our dignity legitimized. I end with this because any cultural community that instinctually justifies and even celebrates the killing of children by its members has reached a level of moral decay that approaches depravity. This flies in the face of all major faith traditions and basic notions of human dignity. And people around the world are not blind to this reality.

The culture of policing and mass incarceration in the United States has compromised the moral standing on the United States on the global stage. Ultimately policing is simply the tip of the spear-mass incarceration must be ended. The policing based recommendations contained in

this short testimony, while not sufficient to ameliorate generations of targeted police violence and intimidation of communities of color may begin a process of healing.

Respectfully,



Justin Hansford

---

i <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/247/23/POF/G1424723.pdf?OpenElement>

ii <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/247/23/PDF/G1424723.pdf?OpenElement>

iii See [http://www.bop.gov/about/statistics/statistics\\_inmate\\_race.jsp](http://www.bop.gov/about/statistics/statistics_inmate_race.jsp). <http://www.naacp.org/pages/criminal-justice-fact-sheet>

iv <http://www.naacp.org/pages/criminal-justice-fact-sheet>

v See <http://www.dailymail.co.uk/news/article-2931020/Mass-brawl-erupts-City-Hall-meeting-discuss-civilian-oversight-Ferguson-police.html>

vi <http://www.nydailynews.com/news/national/darren-wilson-identified-killed-18-year-old-michael-brown-article-1.1904539>

vii <http://www.usatoday.com/story/news/2015/01/15/miami-police-target-practice-mug-shots-blacks/21834491/>

viii <http://news.stlpublicradio.org/post/commentary-missouris-use-force-statute-goes-against-constitutional-rulings>

ix <http://www.nbcnews.com/storyline/michael-brown-shooting/missouri-attorney-general-wants-tougher-deadly-force-law-n261256>

x <http://www.washingtonpost.com/posteverything/wp/2014/12/04/body-cameras-wont-stop-police-brutality-eric-garner-is-only-one-of-several-reasons-why/>

xi <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

## **Policy and Oversight**

### **Written Testimony to the President's Task Force on 21<sup>st</sup> Century Policing**

**Nola M. Joyce, Deputy Commissioner, Philadelphia Police Department**

Thank you for the invitation to submit written testimony to the Task Force on the topic of Policy and Oversight. First, I think it is important that I put my comments into perspective by sharing my experience in policing. It is this life experience that influenced my perceptions and opinions about policing and the role of policy and oversight in the profession. Finally, I will offer some specific recommendations for the Task Force's consideration. I believe that the most important issues that police policy must address are building relationships and collaborations between the police and others, establishing a police culture of transparency and accountability, and creating opportunities for other voices in police decision making.

I have worked in policing for the past twenty-one years. I had the privilege of working in the Chicago Police Department as the Deputy Director of Research and Development; in the Metropolitan Police Department, Washington, D.C. as the Chief Administrative Officer; and now with the Philadelphia Police Department as a Deputy Commissioner. I served in all of these positions as a civilian. My experience of policing is one of an outsider/insider. A view few have had in policing.

Policing is a noble profession. The overwhelming majority of men and women in policing are dedicated to service, honor, and integrity. It is a complicated job no matter what position you hold, whether as an officer, supervisor, manager, or chief. There are competing demands, difficult situations, and limited resources. Policing, like other service professions, often find good people being asked to do hard and dirty work.

However, policing is insulated from external influence in ways that other service professions are not. Creating opportunities for different perspectives, experiences, and voices to be heard within a police organization is crucial to its health and vitality. Yet, the profession of policing still believes that only sworn officers can provide meaningful input into policing policy and

provide oversight of its operations. This insulation, driven by specific practices, is at the core of the issues in policing today.

A sworn officer can only join a police department either at the very bottom of the organization as an officer or at the very top as an “outside” chief. An opportunity for a sworn member to enter a police department at any other level is non-existent<sup>i</sup>. This means that a police department consists of people who grew up in the same police department and only knows policing from that vantage point. Being an outsider in three major police departments, I can tell you that this isolationism fosters the status quo and a homogeneity world view. The group-think that results from this staffing practice obviously limits the alternatives to policies and programs.

Although there have been efforts to bring more civilians into policing, it is sporadic and often at lowest levels of the organization. Civilian 9-1-1 dispatchers, crime analysts, clerks, and crime scene technicians have been hired to replace sworn officers. This process, known as civilianization, has fluctuated with the economic times. When budgets get cut, civilian positions in police departments are the first to be eliminated and officers go back to doing desk jobs. It is even rarer to have civilians brought in at the managerial and higher levels of a police organization. There are two tightly held beliefs (1) that if you wear a badge you can do any job in a police department regardless of your skills and knowledge and (2) if you never wore a badge you cannot understand the business of policing.

It is hard to argue that the support functions of a police department – technology, personnel, finance, research and analysis, policy and program development, grants, communications, records and other behind the scene jobs – could not be fully staffed by qualified civilian employees. If a police department does civilianize these functions, their bosses still tend to be sworn. Civilianization not only frees officers to do police work but it also brings in different views, experiences, and knowledge. Civilian employees tend to turn-over more than sworn members which allows for a refresh of ideas.

Is it any wonder we talk about police culture as a barrier to reform, allowing the misuse of power, and promoting the lack of accountability and transparency?<sup>ii</sup> Any profession or

organization that severely limits entry into decision-making positions to those people who came up from inside the organization will suffer in terms of innovation, openness, and transparency.

**Recommendations:**

- 1. The COPS Office should fund civilian managerial and decision-making positions in police departments. These positions should be equivalent to command level positions (captain and above).**
- 2. The Bureau of Justice Assistance (BJA) and/or COPS should support the development, implementation, and evaluation of programs that train and support civilian command staff in police organizations.**

The recent publication by the IACP, *Advancing a Culture of Cohesion and Community Trust*, reference the work done by John Clayton Thomas.<sup>iii</sup> Thomas identified three roles of public participation in public management – a passive recipient of services, a citizen that engages with the public manager to co-design public programs and services, and a partner who assists in co-producing and delivering public services. I suggest that there are three similar roles for police – the “law enforcer” or the traditional role of police, the “community policing officer” or working with the community to prioritize the work of the police and is accountable to the community for results, and the “co-producer of public safety” where the police, other city workers, and the public are held accountable for achieving public safety.

Co-producing public safety is more than enforcement and more than setting shared priorities. It demands community members work together to define and create safety for everyone. This will require that police and city government share power and responsibility. We need to quickly develop models, implement and test the models, and disseminate the results. This is more than just community meetings, foot patrols, or neighborhood watch. This is community government. Trust and legitimacy is created when people from different perspectives, roles, and interests sit down together to envision a path forward, work together toward a common goal, and hold each other accountable. Oversight is good but insight from partners is better.



## **Recommendations:**

### **3. Fund the development, implementation, and evaluation of efforts to co-create public safety in neighborhoods.**

Bringing outsiders into police organizations and working with partners to co-create public safety will help build a police culture of transparency and accountability. These efforts will take time and something needs to be done now to improve relationships, build trust and legitimacy. This “something” is often suggested as oversight. I believe when people demand oversight they want community views to be heard in reviewing and addressing intentional and unintentional errors in police practice.

Each of the three cities in which I worked had some type of citizen oversight. My experience suggests that this approach has not always been successful in terms of changing police behavior or policy. The relationship between the police department and the oversight board tends to be adversarial. This creates mistrust and limited success. A police department could quickly add community representatives to their Use of Force Review Boards. This Board reviews serious use of force and makes referrals of officers to discipline or training and addresses policies and tactics.

Sentinel Event Reviews<sup>iv</sup> is a promising approach that can be integrated into organizational practice. Sentinel event reviews is an effort to develop a process by which a variety of stakeholders review an event that resulted in a bad outcome that no one wanted. This review focuses on the system (like policies, training, supervision, tactics) and corrects the system so future errors are prevented. The result we want to achieve is one of creating opportunities for other voices to be heard in reviewing and addressing errors in police practice and preventing future errors.

## **Recommendations:**

### **4. Expand the work of NIJ’s Sentinel Event Reviews to fund processes to address officer involved shootings and excessive force and to bring community participants into this review process.**

---

<sup>i</sup> The Metropolitan Police Department, Washington D.C. has been able to bring in sworn personnel at an Assistant Chief level.

<sup>ii</sup> Eugene A. Paoline III, "Taking stock: toward richer understanding of police culture," *Journal of Criminal Justice* 31 (2003), 199-214. Accessed [http://44-398-policeadmin.wiki.uml.edu/file/view/Paolini\\_review+of+police+culture.pdf](http://44-398-policeadmin.wiki.uml.edu/file/view/Paolini_review+of+police+culture.pdf)

<sup>iii</sup> IACP, *IACP National Policy Summit on Community-Police Relations: Advancing a culture of Cohesion and Community Trust*, January 2015.

<sup>iv</sup> National Institute of Justice, *Mending Justice: Sentinel Event Reviews*, September 2014.

## Testimony for the President's Task Force on 21<sup>st</sup> Century Policing

Edward R. Maguire, Ph.D.<sup>1</sup>

Professor of Justice, Law & Criminology

American University

Washington, DC

January 28, 2015

Thank you for the invitation to provide written testimony on the topic of Policy and Oversight for the President's Task Force on 21st Century Policing. Please note that while the invitation listed several important topics, my testimony focuses primarily on the policing of protests and mass demonstrations. I begin by emphasizing that protests serve a valuable social function, and then I briefly discuss the constitutional provisions that protect protesters' rights in the United States. Next I discuss the need to regulate protests and mass demonstrations to preserve public order and public safety. Policing protests fairly and effectively involves striking a careful balance between the rights of protesters and the legitimate interests of government in maintaining order, security, and safety. Police play a central role in achieving this balance. I close with recommendations for improving protest policing in the U.S.

The U.S. has a rich history of protests. Indeed, our nation's democracy was founded on the American colonists' rebellion against oppression. President Dwight Eisenhower once remarked that Americans "are descended in blood and in spirit from revolutionaries and rebels -- men and women who dare to dissent from accepted doctrine..."<sup>2</sup> The workers' rights movement, the women's suffrage movement, and the civil rights movement are just a few examples of disruptive social movements in which mass demonstrations have generated significant social change in the U.S. Protests helped forge the liberty that stands as the hallmark of this great nation.<sup>3</sup>

Recent events serve as a potent reminder that the American tradition of protesting against conditions perceived as unjust continues to flourish. For instance, the anti-globalization movement that emerged in the 1990s has led to massive demonstrations against international corporations and financial organizations in several U.S. cities, including Miami, New York, Philadelphia, Pittsburgh, Seattle, and Washington, DC. Starting in 2009, the Tea Party movement began holding protests throughout the U.S. to support a variety of conservative and libertarian positions. In the recent Occupy movement, protesters in many U.S. cities set up encampments and held mass demonstrations against social and economic inequality. The Occupy movement has largely dissipated with the closing of its encampments, though some cities continue to experience Occupy-related protests. The Democratic and Republican National Conventions routinely attract major protests involving a variety of groups. In the aftermath of recent events in Ferguson, New York City, and elsewhere, mass demonstrations against police misconduct were held throughout the U.S., often in concert with the larger "Black Lives Matter" movement. Protests continue to serve as a vehicle through which those who are angry or frustrated with government, law, or policy can voice their concerns publicly in the hope of stimulating change.

The rights of protesters in the U.S. are enshrined in the Constitution, particularly the First Amendment, which reads: *Congress shall make no law... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.* Freedom of speech and assembly are the cornerstones of the right to protest, yet the Supreme Court's First Amendment jurisprudence reminds us that these rights are not limitless. Among other restrictions, the courts have ruled that the government can impose reasonable restrictions on "the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication."<sup>4</sup>

A recent protest outside of Boston provides a good example of what constitutes a “significant” government interest. On January 15, 2015, protesters from the Black Lives Matter movement chained themselves to concrete-filled barrels on Route 93 during the busy morning commute to call attention to “white complacency in the systemic oppression of black people in Boston.”<sup>5</sup> Traffic slowed to a halt, and the State Police closed down the busy highway. Thousands of people were significantly delayed in reaching their destinations, with purposes ranging from the mundane to the absolutely essential. For instance, an ambulance carrying an 82-year old crash victim with a broken neck to a Level 1 trauma center in Boston had to divert to a hospital without a trauma center as a result of the traffic problems caused by the protesters’ human blockade.<sup>6</sup> The protesters didn’t just inconvenience people; they endangered people’s lives.

While governments have legitimate reasons for regulating protests, there is wide variation across the country in how this regulatory authority is exercised. Many local officials enforce time, place, and manner restrictions in principled ways that are consistent with the spirit of the First Amendment and related case law. That said, some officials abuse their discretion by restricting the freedom of speech and freedom of assembly in ways that are content-based, overly broad, not associated with a legitimate government interest, or that shut down alternative avenues of communication. Moreover, some officials, and indeed some jurisdictions, *repeatedly* violate the spirit of the First Amendment.

For the past three years, my research team and I have been studying the policing of protests. The first phase of this research involved surveying Occupy protesters in several U.S. cities about their perceptions of police. The second phase, based on funding from the Office of Community Oriented Policing Services, involved a comprehensive analysis of how U.S. police agencies respond to protests. Thus, we have examined this issue from the perspectives of both protesters and the police. Our research shows that in some communities, police show considerable restraint and professionalism in handling protests, honoring and even facilitating the First Amendment rights of protesters. In other communities, police respond unskillfully and overzealously, treating protesters poorly and using inappropriate levels of force. Police in some communities have a chilling effect on protests, discouraging protesters from observing their First Amendment rights for fear of being arrested and/or having force used against them by police.

Several major civil settlements in recent years support this claim. In 2014, New York City agreed to pay \$18 million to settle dozens of lawsuits associated with wrongful arrests that occurred during the 2004 Republican National Convention.<sup>7</sup> In 2012, the City of Chicago agreed to pay \$12 million to settle lawsuits associated with the wrongful arrests of more than 900 protesters at a 2003 march against the war in Iraq.<sup>8</sup> In 2010, Washington, DC agreed to pay \$13.7 million to settle a class-action lawsuit by people wrongfully arrested at a 2000 protest near the World Bank and the IMF. In 2009, the City of Los Angeles agreed to pay nearly \$13 million to settle several lawsuits associated with the use of excessive force by police at a 2007 May Day rally.<sup>9</sup> The failure of police to exercise appropriate restraint during protests can be costly for local governments and their insurers.

It may be tempting to conclude that these massive civil settlements have altered the police response to protests in the U.S., but there is plenty of evidence to suggest that this is not the case. The police response to protesters and the press during mass demonstrations in Ferguson, Missouri suggests that overzealous and overly militarized responses to protests remain problematic. Some may view what happened in Ferguson as an isolated instance, but the recent Occupy movement provided many examples of police failing to use appropriate levels of restraint. In one of the most well-known incidents, former U.S. Marine and Iraq war veteran Scott Olsen was awarded \$4.5 million for injuries sustained while attending an Occupy Oakland protest. Olsen’s skull was fractured when he was struck in the head by a “less-lethal” beanbag round fired into a crowd by Oakland police.<sup>10</sup> Olsen’s lawsuit was just one of several filed by Occupy Oakland participants alleging that police violated their civil rights.<sup>11</sup> An independent review of the Oakland Police response to Occupy

Oakland noted systematic deficiencies and concluded that the agency's crowd control tactics were "outdated, dangerous, and ineffective."<sup>12</sup>

In New York City, officials have already settled numerous lawsuits as a result of the way the NYPD handled the Occupy Wall Street protests, with others still underway.<sup>13</sup> Litigation arising from the policing of Occupy Wall Street is just one part of an ongoing pattern of alleged civil rights violations by the NYPD in its handling of protests. Since the tragic events of September 11, the NYPD has come under regular criticism from civil rights advocates for imposing "an unprecedented level of control over protest activity."<sup>14</sup> A report produced by law clinics at NYU and Fordham concluded that the NYPD's response to Occupy Wall Street involved "frequent alleged incidents of unnecessary and excessive police use of force against protesters, bystanders, journalists, and legal observers; constant obstructions of media freedoms, including arrests of journalists; unjustified and sometimes violent closure of public space, dispersal of peaceful assemblies, and corralling and trapping protesters en masse. Pervasive surveillance of peaceful political activity, arbitrary and selective rule enforcement, and restrictions on independent protest monitoring also raise serious concerns. The government has also failed to make transparent critical policies concerning law enforcement activities."<sup>15</sup>

Given the extensive involvement of college students in the Occupy movement, campus police agencies also became involved in handling protests. On November 18, 2011, a police lieutenant at the University of California at Davis pepper-sprayed a group of seated protesters engaged in an act of nonviolent civil disobedience on campus. Photos and videos of this incident quickly went viral on social media and became some of the most iconic images of the Occupy movement. A university task force led by a former California Supreme Court Justice later concluded that "the pepper spraying incident... should and could have been prevented."<sup>16</sup> An external review by a security firm concluded that "the police operation and police leadership on November 18 were flawed in both planning and execution."<sup>17</sup> As a result of the incident, the university ended up paying nearly \$1 million to settle lawsuits with 21 protesters alleging police misconduct.<sup>18</sup>

The University of California at Berkeley, the nucleus of the Free Speech Movement in the 1960s, also came under extensive criticism for its handling of Occupy protests on campus after University police officers repeatedly struck protesters with batons. A \$15 million federal civil rights lawsuit filed by protesters in September 2013 has not yet been concluded, but an internal committee established by the university to review the incident reported that it was "disturbed by the use of batons against the student protesters."<sup>19</sup> As a result of the incidents at UC Davis and UC Berkeley, the University of California system launched an extensive and thoughtful review of its handling of protests throughout the state, resulting in 49 recommendations for improvement.

Policing protests is inherently difficult. Protesters are often disobedient and sometimes treat police officers in a rude and hostile manner. Protesters occasionally attempt to bait police officers into arresting or using force against them. Protesters who are perceived as victims of police repression earn credibility among fellow protesters for their sacrifice to the movement. In one of the sites we visited, an angry protester repeatedly blew smoke into the face of a police officer in a clear attempt to provoke the officer. An administrator who observed the officer remaining stoic in the face of this attempted provocation eventually took the officer's place to give him a break. After dealing with Occupy protesters on an ongoing basis, one police sergeant we interviewed discovered that she had cracked her teeth because she had been grinding them so hard due to the daily stress of dealing with the protesters. Other police officers we interviewed had experienced protesters using force against them, which in some cases was limited to pushing and shoving, but in other cases involved having objects thrown at them by protesters, including bottles, bricks, and jars filled with urine. While most of the protesters we interviewed favor peaceful tactics, some admitted that they embrace more extreme approaches, including property damage and violence. Recent viral video footage captured protesters in New York chanting "What do we want? Dead cops! When do we

want it? Now.”<sup>20</sup> Police officers are human beings and dealing with these types of offensive and threatening behaviors can make the job of protest policing very frustrating.

Managing these complex, dynamic, and sometimes volatile events represents a significant challenge for police in a democratic society. This is one reason why there is such wide variation across the nation in the nature and quality of protest policing. Some agencies have developed thoughtful, principled approaches for balancing the rights of protesters with public safety, public order, and other legitimate government interests. Some are not well-prepared and therefore may respond improperly when faced with an unexpected protest. Others have an ongoing tendency to engage in overly aggressive, militarized responses.

So far, my discussion of the police response to protests has focused on serious allegations of police misconduct. However, as the New York Civil Liberties Union points out, “under-the-radar harassment of protest activity by law enforcement is much more pervasive, and may present as great a deterrent impact on freedom of expression and assembly as occasional incidents of mass arrest or dramatic and well-publicized excessive force.”<sup>21</sup> The nature and tone of the day-to-day interactions between police and protesters can go a long way toward either preventing or instigating conflict. These routine interactions form the backbone of how people develop their attitudes toward police as authority figures. This point is consistent with earlier testimony by Professors Samuel Walker and Tom Tyler at the Task Force’s first listening section. Although the Constitution and the Supreme Court are the ultimate sources of authority on these matters, the right to protest in the United States is ultimately shaped by the police and how they treat protesters.<sup>22</sup>

Based on the research my team and I have conducted on these issues, the next section contains recommendations for improving the policing of protests in the United States.

## Recommendations

1. The Department of Justice and its constituent agencies should work with police leaders and scholars to develop a set of resources that can be used to improve protest policing in the United States. These resources would include the following:

- a) *A model curriculum for training American police on the basic provisions of First Amendment law.* The emphasis of the training should be on practical exercises and simulations that expose officers to realistic scenarios they may face while on-duty. This training should be rigorously evaluated to ensure that it improves knowledge about the First Amendment and its direct implications for the work of police officers. The training could also serve as a basis for police agencies to ensure that First Amendment principles are incorporated into relevant policies, such as those focusing on crowd control, civil disturbances, etc...
- b) *A comprehensive review of existing policies, training, and research on crowd management, intervention, and control.* The need for better policies and training is a recurring theme in the aftermath of protest policing incidents that end badly. Police currently receive a hodgepodge of training on crowd management from local, state and federal sources and little is known about its quality or consistency. Some policies and training appear to be based on outdated ideas about crowd psychology and interpersonal dynamics. Moreover, police training seems to focus heavily on operational tactics for making arrests and using force and very little on strategies that could help prevent conflict in the first place. A comprehensive review of existing policies, training, and research could go a long way toward identifying shortcomings in existing practice and recommending alternative approaches.

- c) *A comprehensive review of the equipment and munitions used by American police during protests, mass demonstrations, and other crowd management events.* Critics have voiced concerns about the excessive militarization of American police agencies. These critiques are multidimensional, but with regard to protest policing they appear to be based on two factors: the appearance of police and the weapons they deploy. When officers line up in a military formation while wearing full protective gear, their visual appearance may have a dramatic influence on how the crowd perceives them and how the event ends. For instance, police officials with extensive experience in dealing with crowds told us: “if you come dressed for a fight, you’re going to get a fight.” The unnecessary or premature deployment of various types of weapons and munitions may generate similar reactions. A comprehensive review of the equipment and munitions used by American police agencies during protests, mass demonstrations, and other crowd management events would be useful for understanding the full range of options available to police.
- d) *A comprehensive program of research on protest policing.* Many of the issues that arise in protest policing are not evidence-based and significant questions remain unanswered. For instance, there are strong differences of opinion among police over whether a “show of force” (staging officers in full protective gear near the crowd) encourages compliance or rebellion among protesters. More generally, little is known about how the visual appearance of police influences people’s willingness to comply with their directives or perceptions about their legitimacy and authority. Social science research on these issues could generate findings of direct relevance for police strategy and tactics and could even be useful for rethinking the design of police protective wear. Similarly, while the field of crowd psychology is somewhat instructive for thinking about how to police protests, much remains to be learned. One intriguing question, for instance, is whether certain police strategies may be able to stimulate cooperative behavior in crowds. Testing ideas from crowd psychology, procedural justice, and community policing could be particularly informative. There are also useful opportunities for science and technology research on the various weapons and munitions police use in protests and other crowd management events. In the event that such weapons and munitions are necessary to control a violent crowd, police should be able to rely on the latest scientific evidence about which options are the most effective and the least dangerous.

2. Police agencies sometimes suppress the right to protest by declaring peaceful protests unlawful, making questionable arrests, using force indiscriminately, or simply harassing protesters. When such actions do not make the evening news or result in death or serious injury, the only recourse available to aggrieved parties is typically to file a report with internal affairs or pursue civil litigation. In some communities, protesters routinely complain that their reports to internal affairs are not taken seriously, and many lack the means to pursue civil litigation. As a result, they are left without a remedy and police agencies are not held accountable for constitutional violations. Given the importance of protest in the United States, the Civil Rights Division of the U.S. Department of Justice should expand its use of “pattern or practice” litigation under 42 U.S.C. § 14141 to investigate potential violations and, if appropriate, compel agencies with a pattern or practice of suppressing protest to make the necessary changes. This would mean incorporating a review of protest policing policies, training, and performance into pattern or practice investigations initiated for other purposes. It would also mean initiating investigations in those instances where the pattern or practice is limited to protest policing. U.S. Attorneys should be charged with reviewing allegations of civil rights violations against protesters within their districts to identify agencies that may be eligible for such litigation.

## NOTES

<sup>1</sup> I am grateful to Thomas Abt, Joshua Chanin, Elizabeth Fernandes, Charles Katz, Bill King, Jon Gould, Megan Oakley, and Jeffrey Snipes for their insightful comments on an earlier draft of this testimony.

<sup>2</sup> Eisenhower, Dwight D. (1954). Speech delivered at the Columbia University National Bicentennial Dinner in New York City (May 31). Source: *The American Presidency Project*, University of California, Santa Barbara.

<sup>3</sup> Velut, Jean-Baptiste (2015). "A Tale of Polarizations: Stress, Inertia and Social Change in the New Gilded Age." Pp. 107-122 in *Democracy, Participation and Contestation: Civil Society, Governance and the Future of Liberal Democracy*, edited by Emmanuelle Avril and Johann N. Neem. NY: Routledge.

<sup>4</sup> Perry Education Association v. Perry Local Educators' Association, 460 U.S. 37, 45 (1983).

<sup>5</sup> Associate Press (2015). "Boston Area Highway Blocked by Protesters." *Boston Herald*, June 15, 2015.

<sup>6</sup> Ellement, John R. and Allen, Evan (2015). "Angry Words after Ambulance is Diverted from Trauma Center." *Boston Globe*, January 15, 2015.

<sup>7</sup> Durkin, Erin. (2014). "City Pays \$18 Million to Settle Lawsuits Stemming from 2004 Republican National Convention at Madison Square Garden." *Daily News*, January 15, 2014.

<sup>8</sup> Dardick, Hal. (2012). "Aldermen Settle Iraq War Protest Lawsuits for \$12 Million." *Chicago Tribune*, June 6, 2012.

<sup>9</sup> Reston, Maeve, and Rubin, Joel (2009). "Los Angeles to Pay \$13 Million to Settle May Day Melee Lawsuits." *Los Angeles Times*, February 5, 2009.

<sup>10</sup> Artz, Matthew (2014). "Oakland to Pay Iraq War Vet \$4.5 Million for Occupy Shooting." *San Jose Mercury-News*, March 21, 2014.

<sup>11</sup> Artz, Matthew (2015). "Settlement Reached in Occupy Oakland Mass Arrest." *Contra Costa Times*, January 14, 2015.

<sup>12</sup> Frazier Group, LLC (2012). *Independent Investigation: Occupy Oakland Response, October 25, 2011*.

<sup>13</sup> Malone, Scott (2014). "Ghosts of Lawsuits Past Prompt Light Touch on Protests by NY Police." *Reuters U.S.*, December 9, 2014.

<sup>14</sup> Dunn, Christopher (2005). "Balancing the Right to Protest in the Aftermath of September 11." *Harvard Civil Rights-Civil Liberties Law Review*, 40: 327-357.

<sup>15</sup> Knuckey, Sarah, Glenn, Katherine, and MacLean, Emi (2012). *Suppressing Protest: Human Rights Violations in the US Response to Occupy Wall Street*. New York: NYU School of Law.

<sup>16</sup> Reynoso Task Force (2012). *UC Davis November 18, 2011 Pepper Spray Incident Task Force Report*, March 2012.

<sup>17</sup> Kroll (2012). *Report Concerning the Events at UC Davis on November 18, 2011*. Submitted to the Office of the President, University of California, February 22, 2012.

<sup>18</sup> Nguyen, Brian (2012). "University of California to Pay Nearly \$1 Million in Deal with 21 Pepper-Sprayed UC-Davis Occupy Protesters." *NBCNews.com*, September 26, 2012.

<sup>19</sup> Committee of U.C. Berkeley Police Review Board (2012). *Report on November 9, 2011*, May 29, 2012 (p. 27).

<sup>20</sup> "Video Shows NYC Protesters Chanting for 'Dead Cops,'" NBC New York, accessed January 28, 2015, <http://www.nbcnewyork.com/news/local/Eric-Garner-Manhattan-Dead-Cops-Video-Millions-March-Protest-285805731.html>

<sup>21</sup> "NYC Free Speech Threat Assessment: Reporting on Risks to the Right to Protest in New York City," New York Civil Liberties Union, accessed January 25, 2015, <http://www.nyclu.org/issues/freedom-of-speech-and-religion/protest-new-york-city>.

<sup>22</sup> Dunn, 2005 (see note 14).





# INTERNATIONAL LAW ENFORCEMENT FORUM

January 28, 2015

## Testimony to the President's Task Force on 21st Century Policing

by Colonel Andy Mazzara USMC (Ret) (US), Executive Director

Colin Burrows QMP (UK), ILEF Advisory Board Chair

This testimony provides recommendations for strengthening public trust and the important relationships between local law enforcement and the communities that they protect, while promoting crime reduction. The International Law Enforcement Forum (ILEF) promotes minimal force options in policing, in line with the mandate of Articles 2 and 3 of the United Nations' [\*Basic Principles on the Use of Force and Firearms by Law Enforcement Officials\*](#), and consistent with civil and human rights standards in the local jurisdictions. The Forum includes policing experts primarily from Canada, New Zealand, Sweden, UK, and US. These experts come from disciplines within law enforcement: operations, policy, medical, forensics, science and technology. Additionally, ILEF draws on relevant expertise from human rights and other non-governmental organizations. Moreover, ILEF's efforts and recommendations have repeatedly aided policing in Canada, UK and US.<sup>i</sup> More on ILEF can be found in its biennial [proceedings](#).

The Forum's origin can be traced to a 1999 meeting hosted by the Los Angeles Sheriff's Department and The Pennsylvania State University, and attended by the Independent Commission on Policing in Northern Ireland. This Commission was created by the UK government as a result of the 1998 Belfast Agreement and is comprised of international experts in policing reform. The Forum has met every 18 months at various locations in the US, Canada and the UK. In late September 2014, the 10th Forum was held in Northern Ireland in Belfast and Derry-Londonderry. The theme of the event was "Policing with the Community and Managing Potentially Violent Encounters" and was most relevant given the events in Ferguson. Drawing on the Northern Ireland experience, this workshop highlighted the importance of creating community confidence and trust in policing before, during, and after violent encounters. This is particularly important in communities which historically have not engaged with policing and where there is a legacy of mistrust<sup>ii</sup>.

Since its inception, the ILEF<sup>iii</sup> has emphasized minimal force options in policing and has maintained a particular focus on the development and utility of less-lethal technologies. This has become increasingly challenging as police face highly lethal situations in public places. Previous forums have correctly focused on preparedness and how to address the threats of active shooters in schools and other public places, international terrorism, and serious public disorder. However, while preparedness to deal with extreme threats of violence is essential, it is also paramount that the police retain the support of the communities whom they serve. Developing tactical capabilities against emerging threats will inevitably result in changes in protective equipment, weaponry, uniforms, and vehicles.

To summarize the extent of the ILEF contribution and inform the exploration of the issues by the Task Force, the following is offered to better focus the discussion:

***The Role of Police Leadership.*** The challenge for police leadership is to create opportunities to involve disengaged communities ensure that officers are trained and equipped to deal with potentially violent situation, and address organizational and individual inappropriate actions. The vast majority of work being done by police professionals is outstanding and deserving of praise –



# INTERNATIONAL LAW ENFORCEMENT FORUM

January 28, 2015

## Testimony to the President's Task Force on 21st Century Policing

by Colonel Andy Mazzara USMC (Ret) (US), Executive Director

Colin Burrows QMP (UK), ILEF Advisory Board Chair

but the first line supervisor must be the person who provides the proper direction and oversight of the officer on patrol. Leadership must establish a clear vision that engenders a high level of public trust. Leaders must create and resource strategies that increase partnerships and promote community relations while decreasing crime. Examples include strategies that have been used for many years across the US such as block watches, community meetings, night out against crime, placing officers in schools as School Resource Officers, deploying community liaison officers, and other community policing strategies. Training in such topical areas as diversity, race relations, and cultural awareness should always be available and considered. Police departments should have a well thought-out strategy for training and education, with clear goals and benchmarks, which is actively implemented.

***Influence of Police Culture.*** Changing cultural attitudes related to how police respond to communities who will not engage with them is essential to defusing and de-escalating tense situations. Understanding culture within local police units must be a priority for commanders and supervisors. Policy directives are not enough because “culture trumps policy every time.” Commanders need incisive feedback about the culture of their departments and supervisors need to watch and deal with the visible and not-too-visible negative symptoms of certain subcultures. A focused effort to inform all US law enforcement about expectations, tools and techniques for improving culture and approaches (Nine Principles of Policing) may be a useful product.

***Civilian Oversight.*** This requires better definition. Different organizational structures are required to oversee policy and effectiveness than those for investigating inappropriate conduct or complaints. Lack of common approaches to this across the US stands in sharp contrast to what we see in the UK. There seems to be some agreement (certainly in international policing perspectives) that effective professional oversight across jurisdictions can provide a potential mechanism for properly holding police commanders accountable.

It is generally accepted that a senior police leader should routinely engage with community leaders to better understand the community's dynamics and needs. He or she should also engage with the community in an effort to better educate the community on police issues. If the approach to independently investigate police conduct were to be considered and adopted in the US, then a major educational effort (perhaps at the national or state level) would be necessary for those investigating agencies to ensure a better understanding of the risks, the dynamics, and the characteristics of armed and violent confrontations facing police officers.

***Disciplinary Systems.*** One of the more promising methods has been “education-based discipline,” in which minor failures are corrected with “non-duty” training that is also used for discipline by the department or agency. In other words, the officer is attending on his own time. Training in police work is very expensive. With that in mind, the individual is not docked for pay either. He simply gives up his time. That said, the whole issue also highlights the notable lack of training across the board, with the implication that had the training been there to begin with the incident would not have happened. There are many union issues involved here as well.



# INTERNATIONAL LAW ENFORCEMENT FORUM

January 28, 2015

## **Testimony to the President's Task Force on 21st Century Policing**

by Colonel Andy Mazzara USMC (Ret) (US), Executive Director

Colin Burrows QMP (UK), ILEF Advisory Board Chair

***Use of Force.*** ILEF has discussed use of force policy, reporting and oversight and our documents are very informative.

***Policy.*** Case law and international best practice can be used to refine policies related to the use of force. Rather than restrictive use of force policies, consideration should be given to codified standards of behavior. Looking at minimal force options and less-lethal weapons, ILEF delegates stress the importance of having independent scientific, technical and medical evaluation of weapons and protective equipment used by police forces. The Northern Ireland, and broader UK, experience of having government-published studies (technical and medical) publically available was central to addressing public confidence that less-lethal technologies were being properly evaluated. There appears to be an emerging gap in the US as a result of a real or perceived reduction in focus at the national level on research involving less-lethal technologies and equipment.

Policies in both North America and the UK have quite properly sought to not overly define excessive or unnecessary force. Recognizing the ongoing challenges in the criminal and civil courts in this regard, it is definitely worth considering that operationalizing human rights law in the United Kingdom has been a powerful stimuli for providing a different planning focus for police operations and responses to critical incidents. In the US, some model policies at the national level might prove helpful but unless politicians in office are willing to take on this complex issue, it is unlikely it will get done. One of the notable exceptions has been the Police Executive Research Forum (PERF) who has made efforts, albeit with law enforcement professionals only, to provide suggested guidelines and models at the national level.

***Reporting and investigations.*** There is a movement in many US communities to have an outside agency come in and investigate the criminal portion of any officer involved shooting (OIS) – this may sometimes be politically expedient, but often delays the investigation causing additional challenges and issues at the scene of the incident. In most large departments, Internal Affairs still conducts a separate parallel investigation and the prosecutor's office reviews the entire event. In the UK, it is fervently believed that in the 21st Century, police officers should not be investigating police officers. This is very much at odds with predominant views currently held by the vast majority of US law enforcement. Clearly all Use of Force (UoF) incidents should be reported and reviewed. There also needs to be more clarity on what constitutes a use of force. This again would be an opportunity at the national level where assistance could be provided. Questions requiring clarification might include: Is pointing a gun a use of force? Is handcuffing a use of force? There needs to be clear definitions.

***Handling Mass Demonstrations and the Use of Military Equipment.*** ILEF acknowledges the public debate on the use of “military” equipment but takes a position that the real issue is not equipment, but rather a mindset - all police equipment must be used to achieve objectives that are within the police mission and purpose. Public education and information in this area can be very useful in mitigating the public perception. The so-called “1033 program” in the US for providing



# INTERNATIONAL LAW ENFORCEMENT FORUM

January 28, 2015

## **Testimony to the President's Task Force on 21st Century Policing**

by Colonel Andy Mazzara USMC (Ret) (US), Executive Director

Colin Burrows QMP (UK), ILEF Advisory Board Chair

surplus equipment to law enforcement agencies merits periodic review but the mischaracterizations used to challenge it only serve to obfuscate meaningful scrutiny. It would seem prudent that corrective measures be based on measurable attributes rather than biased perceptions to avoid the narrow-minded “baby and the bathwater” demands suggested by those expressing more extreme views (i.e., eliminate the program). ILEF has noted that education programs to explain the use of such equipment in the UK, especially in Northern Ireland, have proven effective.

***Civil Rights Enforcement.*** It is the duty of law enforcement professionals to protect individual civil rights. Additionally, local, state and federal government should also be concerned about the rights of officers. Officers’ families are impacted and careers end due to poor reporting by the media and judgments by leaders prior to the conclusion of evidence gathering and the investigation. Civilian leadership must support due process. From an international perspective in relation to civil rights matters and enforcement, there is some confusion as to what is often perceived outside the US as an unusual right for some citizens to carry powerful military grade weapons.

***Research and Data Collection.*** Police agencies in the US gather information on a daily basis, in many cases the detailed data is far in excess of what is needed for proper analysis. In fact, officers are required swear an oath that the data/information is true when they complete reports and then again when they testify. Then the events are filed in an excessive number of reports in document format and further obscured because statistical analysis is nearly impossible. There is typically no organizational ability to identify trends, anomalies, sequences, tendencies, or other useful data. The “intelligence led policing” model is simply a description of using larger data sets for forecasting potentials. Law enforcement in the US, as a whole, is incapable of harvesting useful information from “big data.”

Having said all that, the “COMPSTAT” approach that Chief William Bratton (NYC) is well-known for is on the right track but still has potential problems. The individual officer reporting must not feel that organizational retribution may arise from the nature or extent of his or her report. Making yourself or your supervisor look “good” is not a solid basis for use of force reporting. It is notable that no national data is recorded in the US on the number of people who die following police contact whether there is blame or not. It is difficult to assess improvement if there is no such data to analyze. The availability of such analysis would create an opportunity on a national basis to provide lessons learned on similar cases. There should be a national means of recording such data. Some police departments publish their own use of force policy and this is a positive thing. Seattle Police Department has done excellent work in this area and has published data on use of force in its jurisdiction. Trust is built when data such as this is shared voluntarily with the public.





# INTERNATIONAL LAW ENFORCEMENT FORUM

January 28, 2015

## Testimony to the President's Task Force on 21st Century Policing

by Colonel Andy Mazzara USMC (Ret) (US), Executive Director

Colin Burrows QMP (UK), ILEF Advisory Board Chair

### *Major Recommendations*

1. ***Ensure Adherence to the Nine Principles of Policing:*** Often attributed to UK Prime Minister Sir Robert Peel, these have significantly influencing modern policing in Canada, New Zealand and the UK.<sup>iv</sup> They also have influenced some US police leadership. Termed "policing by consent," these principles make police responsible and accountable to the communities they police. Adherence to these principles has broad implications for police leadership.
2. ***Understand and Respect a Community's Cultures:*** Referencing Milwaukee's large Somali population, one ILEF police officer stated, "Organizationally, it would be incumbent upon you to have cultural training for that large population ... You would be foolish not to have your officers trained in cultural issues for groups that you are going to interact with, in probably one out of three calls."<sup>v</sup>
3. ***Communicate with the Community:*** This should be done for the sake of the principle, "securing of the willing co-operation of the public in the task of securing observance of laws." As one ILEF police officer stated, "In South Florida... the citizens are holding the checkbook. We've made them realize that all the cops that work there are citizens too. So, let's try to make it a glass house. We try to dispel fear and rumors, and we get public support. We put on presentations at citizens meetings and let them know what their tax dollars are going for."<sup>vi</sup>
4. ***Police in a Manner Acceptable to the Community:*** This is in keeping with the principle, "The ability of the police to perform their duties is dependent upon public approval of police actions." This has been emphasized by ILEF member, a retired major in the Springfield, Missouri Police Department. Ultimately, it is typically a jury of ordinary citizens who judge the actions of police officers.<sup>vii</sup> The need for leadership to communicate with its community places great importance on social media. Referring to the Seattle Police Department's "Tweets-By-Beat," which informs its citizens about policing operations, one ILEF police officer stated, "We've had nothing but success."<sup>viii</sup>
5. ***Standardize Use of Force Reporting:*** How powerful and immensely useful to law enforcement it would be if this Task Force achieved a mandate for developing a prototype standard use of force reporting, recording and analysis system to be offered to all law enforcement agencies in the US. Such a proffered national standard approach might also include definitions to assist getting all reporting agencies on the "same page."
6. ***Develop a Model for Local Independent Investigation:*** A template for an Independent (seriously apolitical) Investigating Body concept that is acceptable to both police and the community they serve, coupled with a significant public education, would enhance relations and go a long way to defuse future critical incidents surrounding officer involved shootings.



# INTERNATIONAL LAW ENFORCEMENT FORUM

January 28, 2015

## Testimony to the President's Task Force on 21st Century Policing

by Colonel Andy Mazzara USMC (Ret) (US), Executive Director

Colin Burrows QMP (UK), ILEF Advisory Board Chair

### End Notes

<sup>i</sup> Some examples of ILEF aiding policing in Canada, UK and US are found in the [\*Report of the Ninth International Law Enforcement Forum: the Public, Protecting the Protector in a Constrained Fiscal Environment\*](#), pp 10-11.

<sup>ii</sup> The progress made in Northern Ireland (Belfast and Londonderry-Derry) in policing is well documented in the new book by Robin Masfield and Desmond Rea (2014), [\*Policing in Northern Ireland, Delivering a New Beginning?\*](#) Liverpool University Press.

<sup>iii</sup> The International Law Enforcement Forum was established in 2001. Its origin was supported through the Applied Research Laboratory at Pennsylvania State University under the auspices of the Institute for Non-Lethal Defense Technologies (INLDT). All ILEF reports can be accessed via the internet at the [INLDT Publications Site](#).

<sup>iv</sup> ["Peel's Nine Principles of Policing"](#) .

<sup>v</sup> [\*Report of the Ninth International Law Enforcement Forum: the Public, Protecting the Protector in a Constrained Fiscal Environment\*](#), p. 60

<sup>vi</sup> [\*Report of the Ninth International Law Enforcement Forum: the Public, Protecting the Protector in a Constrained Fiscal Environment\*](#), p. 55

<sup>vii</sup> [\*Report of the Ninth International Law Enforcement Forum: the Public, Protecting the Protector in a Constrained Fiscal Environment\*](#), p. 78

<sup>viii</sup> [\*Report of the Ninth International Law Enforcement Forum: the Public, Protecting the Protector in a Constrained Fiscal Environment\*](#), p. 55

To whom it may concern:

When Mike Brown was killed in Canfield Greens on August 9, life changed dramatically for many people in the Greater St. Louis area, myself included. On that day, as a Black woman living in the United States I fully realized the danger that millions in my community constantly face at the hands of law enforcement.

The killings of Mike Brown, Kajieme Powell, Vonderrit Myers and others are not the result of abnormal incidents, nor do these killings reflect “one bad apple” police officer. They were the manifestation of a system of policing that is unaccountable and acts from its worst impulses of unchecked aggression. It treats black and brown citizens as individual targets and whole communities as collective threats. The existing situation means that too frequently there will be random and unlawful executions of individual targets, and police forces will have negative and even predatory relationships with the communities that they are supposed to be serving and protecting, instead of killing and harassing.

As a result of the current system of policing we have been stripped of our citizenship and robbed of our Constitutional and Human Rights by the very people we pay and empower to protect these rights. This is intolerable!

Mike Brown’s death exposed the gaps in the current systems and process for monitoring police officers in the St. Louis Metropolitan Police Department, the St. Louis County Police Department and the forty-two individual police departments. It also exposed deeper issues in the relationship between the community and the law enforcement. We need solutions that maintain our best values and create the proper relationship between policing authorities and the people who vote them into office and pay for their protection.

As I explore the different responses that have been proposed, the Organization for Black Struggle has proposed the best solution with the Quality Policing Initiative (QPI). The Quality Policing Initiative is based on the concept that police are hired to defend the personal safety and the Civil, Constitutional and Human Rights of every person they serve and protect first and foremost. The QPI makes all five phases of policing authority—(1) recruitment, (2) training, (3) deployment, (4) accountability and (5) advancement—responsive to the communities that they are policing and to the elected officials who deploy them.

The Quality Policing Initiative can be achieved many ways. Any one piece of it is a step in the proper direction but only by adding significant community-driven involvement, as spelled out in the QPI, can we truly put policing into a proper relationship with the community it is empowered to protect and serve.

We are asking that St. Louis Metropolitan Police Department, the St. Louis County Police Department and the forty-two individual police departments sign on to the Quality Policing Initiative and to work with the community to put the model in place.

We are advocating for legislation at the state, county and local levels so the QPI will be strengthened and offer an effective alternative to the existing corrupt system. Elected officials must be accountable for the present levels of oppression, violence and impunity that define most police relationships. Every death and/or injury going forward is and continues to be the fault of the elected officials who have allowed this predatory system to continue to grow.

We need legislation that will hold every policing body in St. Louis County and the City of St. Louis accountable for their demonstrated lack of accountability. It is vital to advocate for the investigation, monitoring, control and, if necessary, even dissolution of any policing body through Quality Policing Initiative.

Each component of the Quality Policing Initiative addresses a different element of these issues, as well as the issues that led to Mike Brown’s death:

**Recruitment:**

1. **Residency Requirements:** Police Officers must live within the jurisdiction that they police.
2. **Affirmative Action:** hiring for racial and gender parity is a minimum requirement so that the police reflect the population they are policing.

**Training:**

1. **Enhanced Personal Unarmed Combat Training:** Police should have to qualify in unarmed combat to give them more confidence and less dependence on their weapons in street encounters.

2. **Conflict Resolution Training:** An officer should be taught to and rewarded for deploying de-escalation/conflict resolution training.
3. **Threat Progression Training:** Police should be taught that there are different levels of response to the public so that they only use force as a last resort, and then only against violent individuals.
4. **Anti-Racism Training:** An officer must be trained in cultural core competencies.

#### **Deployment:**

1. **Demilitarize All Police Forces:** Withdraw from the Department Of Defense 1033 (DOD 1033) Program and withdraw from the Forfeiture/Seizure Program to buy military grade gear.
2. **Stop Using the Police as Collection Agents:** Remove ticket quotas and fees and fines as primary mechanisms to fund municipal government.
3. **Implementation of field contact cards or reports for traffic stops and investigative stops based on suspicion of criminal activity containing race and gender of persons stopped:** The cards should be retained for 24 months and, in addition to the age, race and gender of the person stopped should include (a) the officer's name, race, and badge number; (b) approximate time and location; (c) whether the stop involved a frisk or pat-down search; (d) any weapons, evidence or contraband found during the search; (e) whether the individual involved was arrested or cited, and if so, the charges.
4. **SWAT/Lethal Force Parameters:** Designed in conjunction with the Citizen's Review Board/Civilian Accountability Project.
5. **First Response Escalation Model:** Police responses will not begin at lethal force but will scale up to it and the guidelines will be designed in conjunction with the Citizen's Review Board/Civilian Accountability Project.

#### **Accountability:**

1. **Creation of an effective and automated Early Warning System:** In order to produce an effective disciplinary/rewards system we recommend that there be an **automated Early Warning System that consists of a** database that takes into account the following: (a) numbers and patterns of disciplinary complaints against each officer by citizens and police personnel; (b) allegations of racial bias and domestic violence, civil actions against the officer; (c) use of force as documented in the "use of force" reports; (d), illegal entries and searches as documented in the "search and seizure" reports; (e) other reliable indicia of "at risk" officers and which recommends increased monitoring, supervision, and/or counseling of the officer when the threshold for triggering action by the Early Warning System is reached.
2. **Media Accountability System:** Body and Dash cameras where the data is controlled by a Citizen's Review Board/Civilian Accountability Project entity and shared with the community and police together.
3. **A Citizen's Review Board/Civilian Accountability Project:** The Board must have subpoena, investigatory and prosecution powers. The Board should also have a role in developing police policies and setting standards that impact all five areas of policing (recruitment, training, deployment, accountability and advancement).
4. **Civilian complainants must be treated equally with the accused officer:** We propose and recommend that civilian complainants be treated equally with the officer in question. Both the civilian and the officer must be questioned in the same detail about the alleged conduct, the officer's word must not automatically be accepted over that of the civilian, and reasons must be given for sustaining or not sustaining all cases.
5. **Consideration of substance and patterns of civilian complaints of officer misconduct by the Citizen's Review Board/Civilian Accountability Project (CAP) and Internal Affairs Division (IAD) investigators and supervisors:** We propose and recommend that the substance and patterns of all civilian complaints of police misconduct against an officer be considered by police disciplinary investigators, supervisors, and internal auditors, and that disciplinary complaints of misconduct be included in the periodic evaluations of officers, considered in promotion decisions and that nothing in the Police Union contract shall be interpreted to interfere with this.
6. **We propose a Four Step disciplinary process:** Investigation, findings and disciplinary recommendation of CAP and IAD investigators should be made available to the public wherein Civil litigation or Civil Rights may have been violated and to the County Prosecutor's Office. (a) Review and concurrence or non-concurrence by CAP or IAD supervisors and administrative heads of the agencies; (b) Review of findings and recommendations by the Chief of Police; (c) Review of cases by the County Prosecutor's Office & the CAP where discipline of more than five days is recommended or if criminal charges are going to be pursued. Officers will still have the right to challenge any disciplinary action that does not result in a criminal charge, in court; (d) The Police Department will make available statistics on how many punishments are reversed or



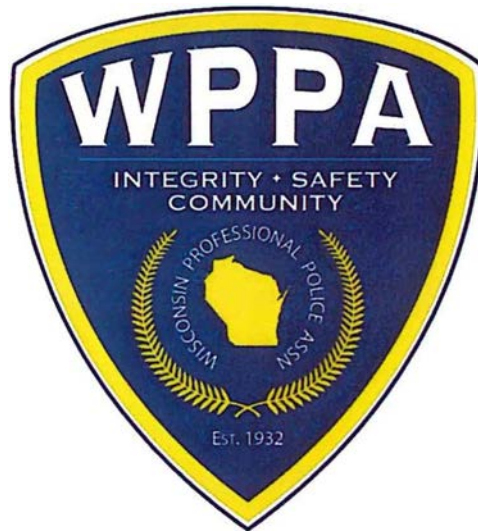
reduced through the grievance procedure thereby making evaluation of the frequency and severity of punishment in the disciplinary process possible and transparent.

7. **Immediate supervisors have responsibility for discussing all disciplinary complaints with their subordinates and recommending additional monitoring, counseling, and/or training when appropriate.**
8. **Creation and implementation of “use of force” and “search and seizure” reports:** We propose and recommend that all officers develop and require all officers to complete written: (a) **“use of force” reports** to be filled out by any officer using type of force greater than escort and compliant cuffing; (b) **“search and seizure” reports** to be filled out when any officer (1) performs a warrantless search (excluding searches incident to arrests, frisks, and pat-downs (2) performs a body cavity or strip search, or (3) conducts any warrantless seizure of property (excluding towing vehicles) and that these reports as well as all disciplinary complaints be routinely monitored by the CAP to determine abuses and patterns of abuses.
9. **Police officers who provide information about other officers’ wrongdoing be protected from reprisals:** Police officers who provide information about other officers’ wrongdoing should be given protection from reprisals and where necessary rewards for providing testimony concerning other officers wrongdoing by allowing transfers to other units and in some cases promotions. Investigators should be permitted to reward officers who risk personal harassment by disclosing other police officer's misconduct. The promise of rewards is a necessary and effective tool in discovering and eliminating misconduct within any close association of people.
10. **CAP and IAD accept anonymous complaints:** We further propose that **anonymous complaints of police abuse of citizens be accepted**, instead of the current ordinance prohibiting anonymous complaints except where criminal conduct is alleged.
11. **Records of disciplinary complaints against officers and their dispositions should be maintained during and for three years following an officer's employment:** We further propose that records of disciplinary complaints by citizens and dispositions of these complaints be maintained during the employment history of the officer and for three years following in the event he/she may seek to resume employment.
12. **Every police jurisdiction should produce printed annual reports and make monthly statistics sufficiently available to allow public monitoring and reasonable analysis of the disciplinary system and should monitor the field contact cards to determine if and where racial profiling is taking place:** These reports must include by unit, district and countywide (a) the number and type of Complaint Registers, (b) who investigated the complaints (CAP, IAD, or the officer's supervisor), including the disposition by category of the complaints (i.e. sustained, not-sustained, unfounded, and exonerated), the punishment recommended at each phase of the process, and the actual punishment meted out at the end of the arbitration process. [Current reports are particularly lacking in describing what punishments if any are actually meted out in what types of cases and in describing how frequently the CAP investigator's findings and recommendations for punishment are reversed or reduced in the disciplinary process.
13. **Participatory Budgeting:** Control of amount and spending of police funds through a community process.
14. **Enhance FOIA Process.**

#### **Advancement:**

1. **Consideration of substance and patterns of civilian complaints of officer misconduct by the Citizen's Review Board/Civilian Accountability Project (CAP) and IAD investigators and supervisors:** We further propose and recommend that the substance and patterns of all civilian complaints of police misconduct against an officer be considered by police disciplinary investigators, supervisors, and internal auditors, and that disciplinary complaints of misconduct be included in the periodic evaluations of officers, considered in promotion decisions and that nothing in the Police Union contract shall be interpreted to interfere with this.
2. **Advancement is based on demonstrated expertise and commendations:** This is in field use of Quality Policing training competencies and not carrying too many censures from the accountability section of the initiative.
3. **Adherence to Best Practices Connected to Advancement:** People who are promoted demonstrate Quality Policing practices and those who don't are not promoted.

## THE PRESIDENT'S TASK FORCE ON 21<sup>ST</sup> CENTURY POLICING



Written Testimony Submitted for the Record by  
James L. Palmer, II, Executive Director of  
The Wisconsin Professional Police Association

January 28, 2015

Representing nearly 10,000 members from almost 300 local association affiliates, the Wisconsin Professional Police Association (WPPA) is our state's largest law enforcement group. Founded as a fraternal organization in 1932, the WPPA now advocates for its members in the workplace, before the state legislature and various administrative agencies, in the courts, and in the community at-large. Our mission is to protect and promote public safety, as well as the interests of the dedicated men and women that serve to provide it. It is in that vein that I am pleased to submit this written testimony on behalf of the WPPA to the President's Task Force on 21st Century Policing as it explores ways to strengthen the public trust and foster strong relationships between local law enforcement and the communities they serve.

Within the page limit constraints posted by the Task Force request for written testimony, the information, observations, and recommendations included herein will concentrate on the specific issues of law enforcement discipline, civilian oversight, use of force investigations, and the influence of the police culture on these subject matters. It is my hope that this testimony will assist the Task Force as it considers broader law enforcement reforms in these areas, and we genuinely appreciate this opportunity to share our insights and contribute to this critically important public discourse.

#### I. The Critical Incident Landscape in Wisconsin

Among the various services that the WPPA regularly provides to its members is representation in the immediate wake of any officer-involved use of force. The WPPA's in-house legal staff is accessible 24 hours a day, seven days a week for this very purpose, and is frequently called upon to represent officers as they undergo each and every stage of the necessary investigations into any use of force. Year in and year out, the WPPA is actively involved in the vast majority of the investigations into officer-involved shootings that occur in Wisconsin, and certainly more than any other law enforcement agency or related organization.<sup>i</sup>

##### A. Systems of Law Enforcement Discipline, Civilian Oversight, and the Investigations and Consideration of Criminal Charges

As is the case in many states across the country, officer-related deaths in Wisconsin are subject to several layers of review. While the framework that exists in our state may bear some similarities to that which prevails elsewhere around the country, it is also likely true that there are some notable distinctions. In Wisconsin, any officer-related death may be evaluated in the following various ways:

1. An internal review by the department that employs the officer to evaluate whether the officer's conduct violated any departmental policies, and civilian review of any disciplinary charges initiated by either the department or a citizen complainant;<sup>ii</sup>

2. A criminal investigation and consideration by the district attorney as to whether criminal charges should be sought.<sup>iii</sup> Criminal charges may be independently initiated by a district attorney, a circuit court judge,<sup>iv</sup> a coroner's inquest jury,<sup>v</sup> or through a John Doe proceeding;<sup>vi</sup>
3. A civil proceeding may be initiated against the officer or the officer's employing agency in state court; and
4. A review by a local critical incident review board or team;<sup>vii</sup>

It is against this backdrop that we offer our insights into a new state statute that was enacted in Wisconsin in 2014 which governs the investigations of officer-related deaths, and how such a reform on a larger scale might serve to benefit our dedicated officers and the citizens that they have sworn to protect. It is our belief that this new reform is the first of its kind in the United States, and it was overwhelmingly supported by our state's law enforcement community.

## II. Wisconsin's Law Mandating Independent Investigations of Officer-related Deaths

2013 Wisconsin Act 348 ("the Act") was signed into law on April 23, 2014.<sup>viii</sup> The Act defines an "officer-involved death" as a death of an individual that results directly from an action or an omission of a law enforcement officer while the law enforcement officer is on duty or while the law enforcement officer is off duty but performing activities that are consistent with his or her law enforcement duties.

### A. State-Mandated Policies

Under the Act, each law enforcement agency, including a law enforcement agency in a 1st class city (City of Milwaukee), must have a written policy regarding the investigation of officer-involved deaths that involve a law enforcement officer employed by the law enforcement agency as follows:

- The policy must require an investigation that is conducted by at least two investigators, one of whom is the lead investigator and neither of whom is employed by a law enforcement agency that employs a law enforcement officer involved in the officer-involved death.
- If the officer-involved death being investigated is traffic-related, the policy must require the investigation to use a crash reconstruction unit from a law enforcement agency that does not employ a law enforcement officer involved in the officer-involved death being investigated, except that a policy for a state law enforcement agency may allow an investigation involving a law enforcement officer employed by that state law enforcement agency to use a crash reconstruction unit from the same state law enforcement agency.

- The policy may allow an internal investigation into the officer-involved death if the internal investigation does not interfere with the investigation conducted by the outside investigators.
- The policy may contain a provision that compensation for participation in an investigation required under the Act may be determined in a manner consistent with mutual aid agreements.

#### B. Disclosure of the Investigative Report

The investigators conducting the investigation are required by the Act to expeditiously provide a complete report to the district attorney (DA) of the county in which the officer-involved death occurred. Also, if the DA determines there is no basis to prosecute the law enforcement officer involved in the officer-involved death, the investigators must release the report that they provided to the DA to the general public. In all other instances, the Act does not amend how the report, or any public record related to the investigation, may be open for inspection and copying under Wisconsin's public records law.

#### C. Notification to Victims

Wisconsin's *Victim's Basic Bill of Rights* provides certain rights to "victims."<sup>ix</sup> It generally requires that the law enforcement agency responsible for investigating a crime must make a reasonable attempt to provide certain written information to the victim of such crime within 24 hours after it has initial contact with the victim.

The Act created a right under the Victim's Basic Bill of Rights for victims of an officer-involved death (i.e. family members of, or persons who resided with, the deceased) to be informed about all of the following:

- The process by which he or she may file either a complaint charging a person with a crime, if permitted by a judge.<sup>x</sup>
- The process by which he or she may file a complaint under the John Doe investigation proceedings.<sup>xi</sup>
- The process of an inquest, commonly referred to as a "coroner's inquest."<sup>xii</sup>

Under the Act, the law enforcement agency must provide the information about these three processes when it makes a reasonable attempt to provide the victim of an officer-involved death with written information concerning the rights of victims within 24 hours after making initial contact with the victim.

### III. The Impact of Wisconsin's New Independent Investigations Law

Since this law went into effect in April of 2014, there have been nine officer-related shooting deaths that were investigated under its requirements. WPPA members were involved in five of these critical incidents, and we believe that all of the agencies involved successfully met their statutory obligations. In fact, in the 10 *non-fatal* officer-involved shootings that occurred during that same time period, all but two of them utilized outside agencies for the investigations, even though the law did not require them to do so. Wisconsin's law enforcement workforce has embraced this new reform, and it is our belief the public's confidence in the officers who serve them has been bolstered tremendously.

It is critical to note that Wisconsin's law mandating the independent investigations of officer-related deaths would not have been possible without the overwhelming support of our state's law enforcement community.<sup>xiii</sup> Indeed, in addition to heavily lobbying the Wisconsin Legislature to support this measure, the WPPA met with most of the newspaper editorial boards in the state as part of a statewide media tour to help advance the legislation in the waning days of the 2013-2014 legislative session. We are unaware of any other state that has a mandate such as ours that serves to ensure an extraordinary level of objective review and transparency, especially when considered in light of the multitude of layers of review that already existed prior to its enactment, and which continue to apply in our state today.

As the foregoing ought to make clear, the use of force by law enforcement officers in Wisconsin is subject to numerous strata of review that include internal review by departments, oversight by civilians from the affected local communities, and independent criminal investigations that can result in charges being initiated by a district attorney, a circuit court judge, or a coroner's inquest jury. The Wisconsin system effectively balances the needs of the general public and the officers who risk their safety to perform their collective duty by providing local civilian oversight and ensuring that sensitive critical incident events will be investigated in an independent and professional manner.

### IV. Recommendations

Given our unique experience in the subject matters addressed herein, we hereby submit the following recommendations to the Task Force for its consideration:

- A. Mandate Data Collection at the Federal Level: As mentioned previously, no state agency in Wisconsin is required to maintain data on officer-involved shootings. As was also noted previously, the WPPA does, however, compile and publicly report that data as it relates to our state. Both the public and law enforcement community would gain by having this information collected by the U.S. Department of Justice, and we are

confident that this undertaking would help educate the public and the media on law enforcement use of force incidents.xiv

- B. Conduct a State-by-State Audit of Existing Systems Covering Law Enforcement Discipline, Civilian Oversight, and the Investigations of Officer-Involved Deaths: While we have a credible sense that the systems in Wisconsin which are described herein provide greater levels of review and scrutiny than those which generally exist elsewhere around the country, we are unable to offer an unqualified assessment in this regard. In fact, we would assert that no organization or agency in the nation can provide a national baseline of the various types of review that are currently employed. For that reason, it is our belief that the best way to derive a meaningful and practical set of reforms or best practices is to conduct a genuine and thoughtful examination of the distinct models of scrutiny utilized throughout the country. It is our fear, and indeed our belief, that any effort to achieve meaningful reforms on a large scale without this undertaking will only frustrate the primary charge of this Task Force and any systemic improvements that it ultimately seeks to advance.
- C. Promote Reforms As Best Practices as Opposed to Federal Mandates: Once this Task Force has identified what it deems to be the best working models of police discipline, civilian oversight, and reviews of police conduct, we recommend that it seek promote those models as best practices. In our view, this will be the most effective way that the Task Force can affect positive change throughout the country and facilitate improvements in these specific areas. Anything else, particularly in the way of federal legislation, could create state constitutional conflicts with, and legal challenges over, state and local government rights and could serve to erode the systems of heightened scrutiny and citizen oversight that already exist in states like Wisconsin.

## V. Conclusion

Despite having a multitude of layers of review and oversight of police conduct, Wisconsin has continued to make significant enhancements from which other states may benefit. Those enhancements have been the result of a sincere dialogue between our law enforcement community and the citizenry it is charged to protect, and they have been embraced by the men and women who must adhere to our elevated requirements. There is no reason that the same cannot occur on a more expansive scale, and we genuinely appreciate the opportunity to contribute to the noble mission of strengthening the relationships between local law enforcement and the communities they serve.



## ENDNOTES

---

i While no state agency in Wisconsin collects and reports data related to the number of officer-involved shootings, the WPPA does compile and publicly report such information on a statewide basis. For example, there were 24 officer-involved shootings in Wisconsin in 2014. Of those, WPPA members were involved in 17, eight of which resulted in a fatality. In all 17 of the officer-involved shootings that involved WPPA members in 2014, the WPPA's legal staff was dispatched to assist the officers at the outset of their investigations. By comparison, of the same 24 officer-involved shootings, the Wisconsin Department of Criminal Investigation was involved in conducting the investigations in eight of them.

ii Under Wis. Stat. § 62.13, cities with a population of 4,000 or more are required to maintain a board of police and fire commissioners consisting of five citizens. These commissions generally govern the operations of the police departments and the management by their respective chiefs. This jurisdiction includes the discipline of police officers. In this regard, police and fire commissions are charged with acting on the disciplinary complaints or charges filed by their respective police chiefs or any other citizen complainant. Any disciplinary proceedings conducted before these commissions are open to the public. By contrast, the City of Milwaukee is governed by a "fire and police commission" under Wis. Stat. § 62.50 in which the police chief actually implements discipline, which the commission can then consider on an appeal initiated by the officer. Disciplinary decisions for county law enforcement officers are ultimately determined by a county board's grievance committee, which consists of members of the county board, or other electors of the county, or both. The disciplinary process for county law enforcement officers is governed by Wis. Stat. § 59.26(8)(b) and collective bargaining terms that are agreed upon pursuant to Wis. Stat. § 111.77, that latter of which includes the officer's right to have their discipline considered by an independent arbitrator from the Wisconsin Employment Relations Commission.

iii Criminal proceedings are generally provided for in Chapters of 967-979 of the Wisconsin Statutes.

iv While a district attorney generally initiates criminal charges, Wis. Stat. § 968.02(3) allows a circuit court judge to independently issue a complaint if he or she finds probable cause to believe that the person to be charged has committed an offense after conducting a hearing.

v Wis. Stat. §§ 979.01 *et seq.* specifically allows a district attorney or circuit court judge to order a "coroner's inquest," which includes a jury trial of any death for the purpose of determining whether certain criminal charges should be sought. Under Wis. Stat. § 979.08(5), the verdict delivered by the inquest jury does not preclude or require the issuance of any criminal charges by the district attorney.

vi A district attorney and circuit court judge may also initiate a secret John Doe proceeding under Wis. Stat. § 968.26, which allows them to launch an investigation with the power of subpoena to determine whether probable cause exists to warrant prosecution. In contrast to the other avenues for the investigation and consideration of criminal charges discussed herein, John Doe proceedings may be held in secret.

vii A growing number of local governments in Wisconsin have established separate teams or boards in order to provide more accountability and to investigate critical incidents for misconduct. By way of example, the City of Milwaukee mobilizes a "Critical Incident Response Team" (CIRT) that includes highly trained and experienced individuals from the Milwaukee Police Department and three other outside agencies: the Milwaukee County District Attorney's office, the Milwaukee Fire and Police Commission, and if a death is involved, the Milwaukee County Medical Examiner's office. Each agency responds to the scene and independently investigates and reports its findings. All correspondence and reports from the CIRT are subject to Wisconsin's open records laws. The City of



---

Milwaukee further utilizes a "Critical Incident Review Board" (CIRB), whose primary purpose is to evaluate critical incidents for misconduct and address police policy and training deficiencies.

viii This Act went into effect on April 25, 2014, and first applied to officer-involved deaths occurring on or after April 25, 2014. See <http://docs.legis.wisconsin.gov/2013/related/acts/348> for the full text of this enactment.

ix Wis. Stat. § 950.04. "Victim" is defined under Wis. Stat. § 950.02(4)(a) as a family member (spouse, minor child, adult child, sibling, parent, or legal guardian) of the person who is deceased, or a person who resided with the person who is deceased.

x See *supra* note iv.

xi See *supra* note vi.

xii See *supra* note v.

xiii The legislation was ultimately supported by the Wisconsin Professional Police Association, Wisconsin Sheriffs and Deputy Sheriffs Association, Wisconsin County Police Association, Wisconsin Chiefs of Police Association, Badger State Sheriff's Association, among others.

xiv For example, Professor Richard Johnson, Ph.D. of the Criminal Justice Program of the University of Toledo recently presented a study entitled *Examining the Prevalence of Deaths from Police Use of Force* in which the data covering all 56,259 homicides from 2009-2012 was examined in detail. Johnson's study asserts that of the total number of homicides that occurred during that time period, 1,491 were the result of police use of force. Among the other conclusions made in this study, Johnson suggests that "people are 103 times more likely to commit suicide, 97 times more likely to be killed in a vehicle crash, and 34 times more likely to be murdered by a criminal than they are to die from police use of force." Johnson's study also suggests that of the 1,491 persons that died from police use of force from 2009-2012, 915 (61.4%) were white males, 481 (32.2%) were black males, 48 (3.2%) were males of other races, 28 (1.9%) were white females, 15 (1.1%) were black females, and 4 (0.2%) were females of other races. More information about this particular study can be located at: <http://www.slideshare.net/robertsearfooss33/police-lethal-forcepresentation>.



NATIONAL  
**FRATERNAL ORDER OF POLICE®**

328 MASSACHUSETTS AVE., N.E.  
WASHINGTON, DC 20002  
PHONE 202-547-8189 · FAX 615-202-547-8190

CHUCK CANTERBURY  
NATIONAL PRESIDENT

JAMES O. PASCO, JR.  
EXECUTIVE DIRECTOR

30 January 2015

Commissioner Charles H. Ramsey  
Co-Chairman  
President's Task Force on 21st Century Policing  
Office of Community Oriented Policing Services  
U.S. Department of Justice  
145 N Street, NE  
Washington, D.C. 20530

Ms. Laurie O. Robinson  
Co-Chairman  
President's Task Force on 21st Century Policing  
Office of Community Oriented Policing Services  
U.S. Department of Justice  
145 N Street, NE  
Washington, D.C. 20530

Dear Commissioner Ramsey and Ms. Robinson,

Thank you both for the opportunity to again submit the views of the National Fraternal Order of Police on law enforcement issues to you and the President's Task Force on 21st Century Policing. I think it is important that the Task Force continue to hear from the rank-and-file.

The topics for this Listening Session is "Policy and Oversight." I will try to address each of the subtopics identified by the Task Force in this letter.

*Title role of police leadership (first-line, supervisory, managerial and senior command)*

I cannot emphasize enough the importance of leadership at every level of a law enforcement agency. From the greenest recruit to the chief, each officer should lead by example. This improves morale, helps maintain discipline and makes the agency as a whole more effective.

In addition to the need for leadership from the front-line to the top, I have found that good departments also identify with and benefit from good leadership in the union or representative organization. As mentioned in previous testimony, the FOP works hard to develop our own leadership because it provides an overall benefit to the department. A strong union leader is more effective at the bargaining table because his leadership is relied on by the members and respected by the employers. In addition, union leaders are often a leadership resource for an agency and advance through the ranks to hold senior command positions. Many leaders of the National FOP hold command ranks.

*Influence of police culture*

Transforming workplace culture is an enormous undertaking and one which can rarely be achieved except incrementally. Agencies and departments with healthy labor-management

relationships, solid leadership and well-trained officers will obviously have a model culture that other agencies should seek to replicate. Officers should take pride in their agency and in the performance of their sworn duties.

Changing or creating a new culture takes hard work and good leadership. Change must start by fostering a culture of accountability. Nothing will break down morale or discipline faster than if the rank-and-file see that there is one standard or expectation for the them and another for command staff. To provide an example, if a department adopts a "must wear" seat belt policy but it is not enforced or worse, not enforced evenly amongst all ranks, then you not only have a policy failure but an erosion of confidence in the utility of policies in general and the effectiveness of leadership.

On the other hand, I know a local agency that has adopted this policy and patrol supervisors and senior command staff have demonstrated a real commitment to the "must wear" policy in an effort to change the safety culture of the officers on patrol. One captain has gone so far as to guarantee a steak dinner to anyone that finds him operating his squad car without a seat belt. Enforcement of the policy has been tough but fair and the agency has seen a huge spike in seat belt use. Given that car crashes are a leading source of officer injury and death, this is a very positive development for the agency and for the safety of those officers. The lesson, here, however, is that if you want to change an agency's culture it must begin with leadership and accountability.

### *Civilian oversight*

Generally speaking, the FOP does not support "civilian review boards" or similarly constituted entities, as we have found them not to be helpful from a public safety or police effectiveness standpoint. However, advisory boards and similar efforts, both formal and informal, which develop relationships with the community and community leaders, is vital.

In his testimony at the First Listening Session, Sheriff Staneck spoke about the role of the Hennepin County Police Advisory Board and how its helped him make good decisions for his agency. These efforts, when they are truly cooperative and collaborative, can be a tremendous resource as well as fostering a sense of transparency and trust. As National President Canterbury stated at his appearance before the Task Force earlier this month, we need to take a holistic approach to improving law enforcement and community relationships. This is not something we can do at the national level-it has to be a local effort and law enforcement leaders should take the lead.

In addition to advisory boards, I would urge local agencies to expand and advocate for citizen academy programs. We need to educate members of the public about the type of training officers undergo and improve their general knowledge of the criminal justice system of which law enforcement is only one part. This will help restore confidence in the agency and our system of justice. Community leaders who are engaged will help create a better awareness about the role law enforcement officers play in policing consistent with the Constitution and the values of our Republic.

### Early intervention and disciplinary systems

These systems are obviously vital to the effectiveness of any law enforcement agency, but they can also have a corrosive effect on morale and retention if not fairly designed or fairly enforced. Rank-and-file officers will have the greatest confidence in systems created with significant input from the union, whether at the bargaining table or some other collaborative effort. These systems obviously must respect and protect the rights of the officers as employees.

One of the challenges in policing in the 21st century is that due process protections for law enforcement officers are inconsistent from jurisdiction to jurisdiction. According to our most recent research, only 14 States have some form of due process protection for officers and many of these have loopholes allowing jurisdictions to "opt out." In jurisdictions where the officers do not have collective bargaining rights or a State statute, officers may have no protection whatsoever and are totally at the mercy of police management. Officers who lose their careers due to administrative or political expediency almost always find it impossible to find new employment in public safety. An officer's reputation, once tarnished by accusation, is almost impossible to restore.

The need for a minimal level of procedural protections for police officers accused of administrative wrongdoing, the gravity of the potential harm to officers created by the lack of uniform safeguards, and the patently unfair disparity in rights afforded other employees but not police officers are compelling reasons that this Task Force should recommend that Congress adopt a Federal law governing due process protections for law enforcement and other public safety officers.

### Use of force: Policy, Reporting and Investigations, Review and Oversight

Our Ohio State Lodge President Jay McDonald is appearing before the Task Force at its Second Listening Session and he covers this topic extensively in his testimony. I do want to say the FOP does not object to the collection and reporting of data on custodial deaths or civilian deaths resulting from contact with law enforcement if policy makers and other law enforcement leaders also improve the collection and reporting of data on officer injuries and deaths. In his remarks on the anniversary of Dr. Martin Luther King, Jr.'s birthday this year, U.S. Attorney General Eric H. Holder, Jr. stated that we needed to do both and we whole-heartedly agree with him.

### Handling mass demonstrations and the use of military equipment

Law enforcement agencies in the United States have been dealing with, responding to and helping to provide security for mass demonstrations since the very beginning of our young nation. Now in the 21st century, it continues to pose a challenge.

Some departments have a great deal of experience with large scale events because of their frequency. Pre-planning with event organizers and other units of government in the area can help to ensure that the events are secure and people and property are protected. The problems faced in these scenarios are crowd size, of which law enforcement officers have little control, and participants whose intent is not to participate in the event or demonstration but to disrupt and exploit the situation for unlawful purposes. Even with experienced agencies, we occasionally see celebrations of sporting or other events turn violent or result in property damage. A balance

between restraint and vigorous efforts to protect property and maintain the peace must be carefully struck.

Spontaneous events are much more challenging because there is no pre-planned route, protected site or, in some cases, enough manpower to adequately police the incident. Law enforcement needs to improve the way it collects intelligence to better anticipate such incidents. Law enforcement also needs to improve its preparedness for such developments.

The FOP supports the use of equipment designed to protect responding law enforcement officers, particularly at mass events when large groups may spiral out of control. When such equipment is deployed reasonably with the protection of life and property in mind, it is very effective especially when paired with less than lethal technology.

I would also object to the media-inspired term "militarized" or "militarization." The Task Force should understand that equipment received through the 1033 program administered by the U.S. Department of Defense (DoD) is *demilitarized and repurposed for public safety use*. Simply because a piece of equipment was originally purchased-with our tax dollars-by the DoD does not make it military equipment. A tool is defined by its use. The equipment is used to defend and protect officers and civilians from threats, not to inflict damage on enemy targets.

#### Civil rights enforcement

Every law enforcement agency in these United States is charged with protecting the civil rights of all Americans. It is important that we recognize that and emphasize this fact to our officers and the communities we protect.

Perhaps in part because there is, in some communities, an erosion of trust in their local department, there have been increasing calls for the U.S. Department of Justice to expand greatly the number and frequency with which they examine police-involved shootings. From the policy perspective this seems to be an error and a tremendous strain on the Department's already limited resources. In some situations, the FOP believes that Federal investigations may be warranted and we seek, as much as we can, to be a cooperative partner in such investigations as we were in Cincinnati just 10 years ago. The public and community leaders should not, however, see the Justice Department as the only remedy. By holding law enforcement leaders accountable for their actions and those of their agency, we can ensure that civil rights are protected in our communities.

#### Research and data collection

The FOP supports more robust reporting for data already collected by law enforcement agencies. We do not support punishing agencies by reducing their eligibility for or amount of Federal grants to assist law enforcement agencies especially in cases where the reason for not reporting is diminished resources. We should not expect any law enforcement agency to pull an officer off the beat to submit statistics to the Justice Department.

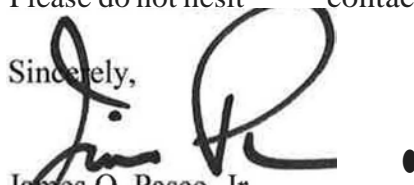
Instead, Congress and other policy-makers should provide incentives for agencies to submit their data. The Deaths in Custody Reporting Act and the Law Enforcement Officers Killed and Assaulted program administered by the Federal Bureau of Investigation (FBI) are two programs that we know for a fact have not collected all available data. Most researchers agree that even the Uniform Crime Report (UCR) does not provide a full and complete picture. Data collection in law enforcement is adequate but there is much room for improvement.

In terms of collecting data, the FOP has been reluctant to endorse policies, programs or legislation that would put additional data collection burdens on local law enforcement, the rank-and-file officer in particular. This includes the collection of the racial identity of drivers during traffic stops. When you add to the list of things that police officers have to do, you are necessarily subtracting from the law enforcement mission. Police officers are supposed to prevent crime and catch crooks, not collect data for Federal studies.

### ***Conclusion***

I will conclude by thanking you again for seeking out the perspective of the rank-and-file officer. Please know that National President Canterbury and the more than 330,000 members of the Fraternal Order of Police stand ready to assist you and the other members of the Task Force. Please do not hesitate to contact me if I can be of any additional assistance.

Sincerely,



James O. Pasco, Jr.  
Executive Director

President's Task Force on 21st Century Policing  
Office of Community Oriented Policing Services  
U.S. Department of Justice  
145 N Street, N.E. 11th Floor  
Washington, DC 20530

January 28, 2015

## **Policy and Oversight | LGBT Experiences of Policing**

The following submission is made on behalf of the undersigned LGBT organizations and organizations advocating on behalf of People Living With HIV (PLWH), and offers recommendations for policing policy and oversight specific to the experiences of lesbian, gay, bisexual, transgender, Two Spirit, gender nonconforming, queer and questioning (LGBTQ) people.

### **INTRODUCTION**

As highlighted in a report recently published by the NAACP, in addition to experiencing many of the same forms of racial profiling and race and poverty-based discriminatory policing practices as other members of Black communities and communities of color, American Indian and Alaska Native peoples, homeless and low-income communities, and immigrants, LGBTQ people of color experience gender and sexuality-specific forms of racial profiling and police brutality.<sup>i</sup> LGBTQ people, particularly LGBTQ youth and people of color, also experience pervasive profiling and discriminatory treatment by local, state and federal law enforcement agents based on actual or perceived sexual orientation, gender, gender identity or expression, or HIV status.<sup>ii</sup>

Over the past decade, the National Coalition of Anti-Violence Programs (NCAVP) has found that law enforcement agents have consistently been among the top three categories of perpetrators of homophobic or transphobic violence against LGBTQ people reported to anti-violence organizations.<sup>iii</sup> In a recent national survey of LGBTQ people conducted by Lambda Legal, a quarter of respondents who had in-person contact with police reported at least one type of misconduct or harassment, including profiling, false arrests, verbal or physical assault, or sexual harassment or assault. LGBTQ people of color, LGBTQ youth, low-income LGBTQ people, and transgender people were much more likely to report an experience of at least one type of police misconduct or harassment.<sup>iv</sup> The National Transgender Discrimination Survey, conducted by the National LGBTQ Task Force and National Center for Transgender Equality, found 22% of transgender people who interacted with police report harassment, 6% report physical assault, and 2% report sexual assault by police officers.<sup>v</sup> Across the country, non-heterosexual youth are more likely to be stopped by the police and experience greater criminal justice sanctions not explained by greater involvement in violating the law.<sup>vi</sup> Additionally, LGBTQ people of color have been found to be five times more likely to be asked about their immigration status by law enforcement than white survey respondents.<sup>vii</sup> Investigations of local police departments in New Orleans and Puerto Rico by the U.S. Department of Justice have documented patterns and practices of profiling and discriminatory policing of LGBTQ people,<sup>viii</sup> and a number of local organizations have documented department-specific patterns and practices.<sup>ix</sup>

**For more information about LGBTQ people's experiences of profiling and discriminatory policing, please consult *A Roadmap for Change: Federal Policy Recommendations to Address***

*Criminalization of LGBT People and People Living With HIV*, co-authored by the Center for American Progress, the Center for Gender and Sexuality Law at Columbia University, the Center for HIV Law and Policy, and Streetwise and Safe (SAS), available at: <http://web.law.columbia.edu/gender-sexuality/roadmap-change>, as well as the **January 9, 2014 submission of Streetwise and Safe (SAS) to the Taskforce.**

Based on these documented patterns and practices, gender and sexuality-specific forms of racial profiling and discriminatory policing requiring specific policy reforms include:

- Homophobic and transphobic verbal harassment and abuse by law enforcement officers;
- Profiling and discriminatory enforcement of prostitution-related and lewd conduct offenses, including citation of possession or presence of condoms as evidence of intent to engage in prostitution-related or lewd conduct offenses;
- Failure to respect individuals' gender identity and expression when addressing members of the public, arrest processing, searches, and placement in police custody;
- Sexual harassment and assault by law enforcement officers;
- Unconstitutional and unlawful searches to assign gender, and more invasive and intrusive searches of transgender and gender nonconforming people than non transgender people;
- Dangerous placement and cruel, inhuman and degrading treatment in police custody.

## RECOMMENDATIONS

### A. *Civil Rights Enforcement*

#### 1) **Pass, effectively implement, and enforce LGBTQ-inclusive anti-profiling measures**

- The Administration should immediately **expand the protections of the Guidance for Federal Law Enforcement Agencies** issued by the U.S. Department of Justice in December 2014 to reach all federal and federally funded law enforcement activities, including and especially those that target Muslim, Arab, Sikh and South Asian communities and take place at our borders, which until recently were closed to LGBTQ immigrants and people living with HIV (PLWH).
- Local law enforcement agencies should be required, as a condition of receipt of federal funding, consistent with Title VI of the Civil Rights Act of 1964, to **adopt, effectively implement, and enforce prohibitions against profiling consistent with the Guidance for Federal Law Enforcement Agencies on the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation and Gender Identity** issued by the U.S. Department of Justice in December 2014. State and local profiling bans should incorporate an **independent enforcement mechanism** accessible to members of the public.
- The Administration should work with Congress toward the passage of an **End Racial Profiling Act that includes protections against profiling on the basis of gender, sexual orientation, and gender identity.**

#### 2) **End discriminatory policing of homeless people and low-income communities**

One in four LGBTQ youth will be pushed out or kicked out of their homes at some point, and a disproportionate number of homeless youth identify as LGBTQ.<sup>x</sup> LGBTQ youth and adults are thus disproportionately impacted by policing practices targeting homeless people, public housing residents, and low-income communities.



- The U.S. Department of Justice should **issue guidance to state and local governments** on the constitutionality and cost-effectiveness of adoption and enforcement of ordinances criminalizing ordinary life-sustaining activities in public spaces;
- The U.S. Department of Justice should incorporate **investigation of civil rights abuses of homeless people** as a standard practice in federal pattern and practice investigations, and include provisions addressing discriminatory policing of homeless people in federal consent decrees.

### **3)End the use of condoms as evidence of all prostitution-related crimes**

Police and prosecutors' use of the mere possession or presence of condoms as evidence of any prostitution-related offense acts as a powerful disincentive to carrying, distributing and sharing condoms among populations at high risk of police profiling and discriminatory policing such as LGBTQ youth of color, who are also at high risk of HIV and other sexually transmitted infections.<sup>xi</sup> It also encourages people engaged in trafficking of people in the sex trades to deny access to condoms to people they are exploiting – placing trafficking victims at even greater risk.<sup>xii</sup>

- The Administration should, consistent with the recommendation of the Presidential Advisory Commission on HIV/AIDS, **issue and publicize guidance to federal, state and local law enforcement agencies condemning the reliance on mere possession or presence of condoms as evidence of intent to engage in criminal activity**, and encourage agencies to adopt policies prohibiting this practice.

### **4)Establish nationwide standards for treatment of LGBTQ people in police custody**

In the absence of policies prohibiting discrimination based on sexual orientation and gender identity and clear policies governing the determination of gender for the purposes of arrest processing and protection of LGBTQ people in police custody, LGBTQ people in the custody of local law enforcement, including in police lock-ups, all too often experience unlawful, unnecessary and humiliating searches to assign gender, homophobic and transphobic discrimination and abuse, and unsafe placement.<sup>xiii</sup> In particular, searches conducted by police officers on the street or in police detention facilities for the purposes of assigning a gender to detainees based on anatomical features—or simply to ogle or humiliate transgender and gender nonconforming arrestees—are both constitutionally prohibited and widespread.<sup>xiv</sup>

- In consultation with groups who have successfully advocated for local policies, the U.S. Department of Justice should **develop and promulgate national standards for local law enforcement agencies relating to placement, searches, and interactions with transgender and gender non-conforming individuals** consistent with the provisions of consent decrees entered into with the New Orleans Police Department and the Puerto Rico Police Department, and make adoption of policies consistent with the guidance a condition of receipt of federal funding.
- The Department of Justice should amend the Prison Rape Elimination Act (PREA) regulations to include an explicit prohibition on searches for the sole purpose of determining genital characteristics in police lock-ups, regardless of whether conducted as part of a broader medical examination, and regardless of whether genital characteristics are known.<sup>xv</sup>

## 5) End Sexual Harassment and Assault by Law Enforcement Officers

As documented by Amnesty International, the International Association of Chiefs of Police (IACP), the Cato Institute, and independent researchers, sexual harassment and assault by law enforcement officers is an often invisible but pervasive practice requiring the immediate adoption and effective enforcement of policies, training, oversight and disciplinary practices.<sup>xvi</sup> LGBTQ people, and particularly lesbian and transgender women, are targeted for this gender-specific form of police brutality.<sup>xvii</sup>

- Federal law enforcement agencies should **adopt policies aimed at documenting, preventing, and addressing sexual harassment, abuse, and assault by local law enforcement agents** which are consistent with the recommendations of the International Association of Chiefs of Police.
- The U.S. Department of Justice should condition federal funding to local law enforcement agencies on adoption of policies aimed at documenting, preventing, and addressing sexual harassment, abuse, and assault by local law enforcement agents which are consistent with the recommendations of the IACP.
- The U.S. Department of Justice should **aggressively pursue enforcement of existing PREA standards for police lock-ups.**
- The U.S. Department of Justice should issue a clarification that the definition of “lock-ups” contained in the PREA regulations includes police cars and other temporary locations of police detention.
- The U.S. Department of Justice should initiate new rulemaking pursuant to PREA that would more closely harmonize the PREA provisions pertaining to police lockups with those pertaining to adult jails and prisons, including augmenting provisions related to access to victim advocates, response planning, training and education, and screening for risk of sexual victimization and abusiveness, to police lock-ups.

**Additionally, the undersigned organizations endorse in principle the national demands issued by Ferguson Action,** available at: <http://cdn.fergusonaction.com/wp-content/uploads/2014/11/demands.pdf>

### *B. Civilian Oversight*

Independent and vigorous civilian oversight is essential to effective enforcement of changes to policing policies. Additionally, civilian oversight bodies must be representative of and responsive to the experiences of communities directly impacted by discriminatory policing.

- Civilian oversight bodies made up of representatives from communities directly impacted by discriminatory policing, including youth, women, and LGBTQ communities, similar to those established under federal consent decrees with Seattle and Cincinnati, should be established and vested with substantial authority, including subpoena power and independent disciplinary authority.
- Civilian oversight bodies should be charged with regularly analyzing data on a range of police department practices to determine if there are disparities based on race, age, gender, gender identity, or sexual orientation in enforcement practices and provided with sufficient resources to

do so. Information relating to sexual orientation and gender identity of complainants must be collected on a voluntary and anonymous basis, after informed consent, and analyzed separately from any identifying information regarding the complainant.

- Investigators assigned to civilian oversight bodies must be trained by community-based organizations with expertise in police interactions between LGBTQ people and police and working with survivors of sexual assault.
- Complaint mechanisms should be fully accessible to all members of communities directly impacted by discriminatory policing practices. Community-based organizations should be empowered to accept complaints and investigators should be required to travel to meet with complainants at locations accessible to them.
- Individuals should be offered the opportunity to file complaints anonymously in order to ensure that individuals can do so without fear of retaliation or further abuse. Oversight bodies should accept and vigorously investigate complaints filed by third parties and organizations on behalf of individuals.
- Statements made in the context of filing a complaint of police misconduct should be inadmissible in criminal proceedings. Alternatively, the time limits for filing complaints of police misconduct should extend at least 6 months beyond the termination of any criminal prosecution relating to the incident in question.

### *C. Data Collection*

To protect the privacy and dignity of people with whom they come in contact, law enforcement agents should never be charged with mandatory data collection relating to sexual orientation or gender identity during police interactions or while LGBTQ people are in custody. This policy is distinct from and does not affect voluntary provision of information relating to sexual orientation or gender identity to ensure safer placements in police custody. Questions concerning mistreatment of LGBTQ and gender-nonconforming people by law enforcement officers should be added to the Bureau of Justice Statistics Police Contact Survey and the Office of Victims of Crime National Intimate Partner and Sexual Violence Survey.

### *D. Body Worn Cameras*

In order to protect the privacy and dignity of LGBTQ people, law enforcement agencies adopting the use of body worn cameras should develop, in consultation with affected communities, publicly available policies on their use, including strong safeguards with respect to consent, tampering, and access to recordings.

Endorsed by:

American Civil Liberties Union  
Audre Lorde Project  
Best Practices Policy Project  
Black and Pink  
Branching Seedz of Resistance  
BreakOUT!  
Brooklyn Movement Center  
CAAAV (Organizing Asian Communities)

Center for HIV Law and Policy  
Center on Race, Crime and Justice,  
John Jay College of Criminal Justice  
Communities United for Police Reform  
Colorado Anti-Violence Program  
Community United Against Violence (CUAV)  
DC Trans Coalition  
DeColores Queer Orange County

DRUM - South Asian Organizing Center  
 El/La Para TransLatinas  
 Equity Project  
 FIERCE  
 Gays and Lesbians Opposing Violence  
 Gender Justice LA  
 Global Action Project  
 GSA Network  
 HIPS (Helping Individual Prostitutes Survive)  
 Jacksonville Area Sexual Minority Youth  
 Network (JASMYN)  
 Justice Committee  
 Lambda Legal  
 Legal Aid Society  
 (Criminal, Civil and Juvenile Practices)  
 Malcolm X Grassroots Movement  
 Missouri GSA Network

National Center for Lesbian Rights  
 National Center for Transgender Equality  
 National Coalition of Anti-Violence Programs  
 National LGBTQ Task Force  
 National Queer Asian Pacific Islander  
 Alliance  
 New York City Anti-Violence Project  
 OUT Now  
 Picture the Homeless  
 Providence Youth Student Movement  
 Sisterlove, Inc.  
 Streetwise and Safe (SAS)  
 Third Wave Fund  
 Transgender Law Center  
 VOCAL-NY  
 Young Women United

---

<sup>i</sup> National Association for the Advancement of Colored People, *Born Suspect: Stop-and-Frisk Abuses &*

<sup>ii</sup> Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, *Queer (In)Justice: The Criminalization of LGBT People in the United States* (Boston: Beacon Press, 2011); Kathryn E. W. Himmelstein and Hannah Brückner, “Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study,” *Pediatrics* 127 (1) (2011): 49-57 (non-heterosexual youth more likely to be stopped by the police and experience greater criminal justice sanctions not explained by greater involvement in violating the law or engaging in transgressive behavior); Brett G. Stoudt, Michelle Fine, and Madeline Fox, *Growing Up Policed in the Age of Aggressive Policing Policies*, 56 N.Y.L. Sch. L. Rev. 1331 (2011) (LGB youth are more likely to experience negative verbal, physical, and legal contact with the police, and more than twice as likely to experience negative sexual contact in preceding six months); Amnesty International, *Stonewalled: Police Abuse and Misconduct Against LGBT People in the United States* (Washington: Amnesty International, 2005), available at <http://www.amnesty.org/en/library/asset/AMR51/122/2005/en/2200113d-d4bd-11dd-8a23-d58a49c0d652/amr511222005en.pdf>.

<sup>iii</sup> National Coalition of Anti-Violence Programs, *Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities in the United States in 2010*, (New York: National Coalition of Anti-Violence Programs, 2011), available at [http://www.avp.org/storage/documents/Reports/2011\\_NCAVP\\_HV\\_Reports.pdf](http://www.avp.org/storage/documents/Reports/2011_NCAVP_HV_Reports.pdf).

<sup>iv</sup> Lambda Legal, *Protected and Served? Survey of LGBT/HIV Contact with Police, Courts, Prisons, and Security* (2014), available at [www.lambdalegal.org/protectedandserved](http://www.lambdalegal.org/protectedandserved).

<sup>v</sup> Jaime M. Grant, Lisa A. Mottet, and Justin Tanis, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), available at [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf).

Himmelstein, *supra* note ii.

<sup>vii</sup> Lambda Legal, *supra* note iv.

<sup>viii</sup> U.S. Department of Justice, Civil Rights Division, *Investigation of the New Orleans Police Department*, March 16, 2011; U.S Department of Justice, Civil Rights Division, *Investigation of the Puerto Rico Police Department*, September 5, 2011.

- 
- <sup>ix</sup> BreakOUT!, *We Deserve Better!* (2014), available at: <http://www.youthbreakout.org/sites/g/files/g189161/f/201410/WE%20DESERVE%20BETTER%20REPORT.pdf>; Make the Road New York, *Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights*, (New York: Make the Road, 2012), available at [http://www.maketheroad.org/pix\\_reports/MRNY\\_Transgressive\\_Policing\\_Full\\_Report\\_10.23.12B.pdf](http://www.maketheroad.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf); Frank H. Galvan and Mohsen Bazargan, *Interactions of Latina Transgender Women with Law Enforcement* (Los Angeles: Bienestar, 2012), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Galvan-Bazargan-Interactions-April-2012.pdf>;
- <sup>x</sup> Nico Sifra Quintana, Josh Rosenthal, and Jeff Krehely, *On the Streets: The Federal Response to Gay and Transgender Homeless Youth*, Center for American Progress (2010). (LGBT youth make up 5-7% of the youth population but 40% of the homeless youth population).
- <sup>xi</sup> Human Rights Watch, *Sex Workers at Risk: Condoms as Evidence of Prostitution in Four U.S. Cities*, (2012) available at [http://www.hrw.org/sites/default/files/reports/us0712ForUpload\\_1.pdf](http://www.hrw.org/sites/default/files/reports/us0712ForUpload_1.pdf); Acacia Shields, *Criminalizing Condoms: How Policing Practices Put Sex Workers at IV Services at Risk in Kenya, Namibia, Russia, South Africa, the United States, and Zimbabwe* (New York: Open Society Foundations, 2012), available at <http://www.opensocietyfoundations.org/reports/criminalizing-condoms>; PROS Network and Leigh Tomppert, *Public Health Crisis: The Impact of Using Condoms as Evidence of Prostitution in New York City*, (New York: PROS Network and Sex Workers Project, 2012), available at <http://sexworkersproject.org/downloads/2012/20120417-public-health-crisis.pdf>;
- <sup>xii</sup> Florrie Burke (founder of national Freedom Network and recipient of the inaugural Presidential Award for Extraordinary Efforts to Combat Trafficking in Persons from President Barack Obama), *Forced Into Prostitution and Denied a Lifeline*, Huffington Post May 15, 2013, available at: [http://www.huffingtonpost.com/florrie-burke/forced-into-prostitution-\\_b\\_3279937.html](http://www.huffingtonpost.com/florrie-burke/forced-into-prostitution-_b_3279937.html)
- <sup>xiii</sup> National Prison Rape Elimination Commission, “National Prison Rape Elimination Commission Report” (2011), available at [http://static.nicic.gov/UserShared/2013-03-29\\_nprec\\_finalreport.pdf](http://static.nicic.gov/UserShared/2013-03-29_nprec_finalreport.pdf); Mogul et al., *supra* note ii; Amnesty International, *supra* note ii.
- <sup>xiv</sup> Amnesty International, *supra* note ii; Alex Coolman, Lamar Glover, and Kara Gotsch, *Still in Danger: The Ongoing Threat of Sexual Violence against Transgender Prisoners* (Los Angeles and Washington: Stop Prisoner Rape and ACLU National Prison Project, 2005), available at <http://www.justdetention.org/pdf/stillindanger.pdf>.
- <sup>xv</sup> Invasive and degrading genital searches conducted by law enforcement as “gender checks” are unfortunately commonplace. Amnesty International, *supra* at note ii. The current language in PREA, which prohibits such searches “unless part of a broader medical examination” leaves too much discretion as to what constitutes a “broader medical examination,” given the ongoing problem of harassing and assaultive genital searching of LGBT detainees.
- <sup>xvi</sup> Stinson, Philip M.; Liederbach, John; Brewer, Steven L.; and Mathna, Brooke E., *Police sexual misconduct: A national scale study of arrested officers* (2014), Criminal Justice Faculty Publications. Paper 30, [http://scholarworks.bgsu.edu/crim\\_just\\_pub/30](http://scholarworks.bgsu.edu/crim_just_pub/30); International Association of Chiefs of Police, *Addressing Sexual Offenses and Misconduct by Law Enforcement Officers: An Executive Guide* (Virginia: International Association of Chiefs of Police, 2011), available at: <http://www.theiacp.org/Portals/0/pdfs/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf>; Cato Institute, *National Police Misconduct Reporting Project Annual Report* (2010), available at: <http://www.policemisconduct.net/statistics/2010-annual-report>; Samuel Walker and Dawn Irlbeck, *Driving While Female*, Police Professionalism Initiative, University of Omaha (2012), available at: <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2002.pdf>.
- <sup>xvii</sup> Amnesty International, *supra* note ii; *see also* National LGBTQ Task Force, *supra* note ii.

President's Task Force on 21st Century Policing  
Office of Community Oriented Policing Services  
U.S. Department of Justice  
145 N Street, N.E. 11th Floor  
Washington, DC 20530

January 28, 2015

## **Policy and Oversight | Women of Color's Experiences of Policing**

The following submission is made on behalf of the undersigned organizations and individuals, and offers recommendations for policing policy and oversight specific to the experiences of Black women, Indigenous women, and women of color of all gender identities and sexualities.

### **INTRODUCTION**

Black women, Indigenous women, women of color, immigrant women, lesbian and transgender women, and homeless and low income women experience many of the same forms of racial profiling, law enforcement violence, and race and poverty-based discriminatory policing practices as other members of Black communities and communities of color, American Indian and Alaska Native peoples, homeless and low-income communities, and immigrants, as well as gender and sexuality-specific forms of racial profiling and police brutality.<sup>i</sup>

#### **Profiling and Women of Color**

Although racial profiling data reported by federal and state governments is rarely, if ever, disaggregated by race *and* sex, racial profiling studies which do analyze the experiences of women of color separately from those of men of color conclude that “for both men and women there is an identical pattern of stops by race/ethnicity.”<sup>ii</sup> For instance, in New York City, one of the jurisdictions with the most extensive data collection on police stops, rates of racial disparities in stops and arrests are identical among men and women.<sup>iii</sup> Racial profiling of women of color has specifically been reported in the context of law enforcement practices associated with the “war on drugs” and the policing of prostitution-related offenses.<sup>iv</sup>

#### **Use of Force**

It should go without saying that Black women and women of color also experience excessive force up to and including police shootings,<sup>v</sup> including most recently Jessie Hernandez, a 16 year old Latina killed by Denver police as this submission was being prepared,<sup>vi</sup> Aura Rosser, a 40 year old Black woman killed by Ann Arbor police,<sup>vii</sup> and Tanisha Anderson, a 37 year old Black woman killed by Cleveland police,<sup>viii</sup> all of whom were killed in the short period of time since this Task Force was established. In the weeks following Eric Garner's killing in New York City an NYPD officer put Rosan Miller, a Black 27 year-old 5 month pregnant woman in a choke hold as they attempted to arrest her for grilling on the sidewalk,<sup>ix</sup> Denise Stewart, a Black grandmother who also had asthma was dragged naked into a hallway by officers who falsely assumed she was abusing her children,<sup>x</sup> a woman perceived by NYPD officers to be queer was thrown to the ground and beaten after being accused of jaywalking in the West Village,<sup>xi</sup> and another pregnant mother was thrown to the ground in Sunset park by NYPD officers who then used a TASER on her stomach.<sup>xii</sup> These are but a few

examples of the excessive force to which women of color are submitted on a routine basis, and which must also be at the center of national debates surrounding police shootings and use of excessive force against people of color.

## **Police Sexual Assault and Misconduct**

Although no official data currently exists, what research is available indicates that sexual harassment and assault of members of the public by police officers occurs with alarming frequency, yet the vast majority of departments have no policies or training in place explicitly addressing this issue.<sup>xiii</sup>

In 2010 the CATO Institute's National Police Misconduct Statistics and Reporting Project recorded 4,861 unique reports of police misconduct involving 6,613 sworn law enforcement officers. Sexual assault and misconduct was the second most frequently reported form of police misconduct after excessive force, representing 9.3% of complaints analyzed. Over half of the officers involved in reported misconduct were alleged to have engaged in forcible nonconsensual sexual conduct while on-duty. Over half of incidents analyzed alleged police sexual misconduct with minors. Rates of sexual assault rising to the level of FBI index crimes were found to be significantly higher among law enforcement officers than the general population.<sup>xiv</sup>

Two studies of law enforcement license revocations in Missouri and Florida found that sexual misconduct was the basis for revocations in almost 25% of cases.<sup>xv</sup> A survey of law enforcement officials in the St. Louis, Missouri metropolitan area concluded that officers report sexual misconduct to be common, yet criminal justice officials have done little to control the problem.<sup>xvi</sup> The Salt Lake City Tribune quoted the Utah Peace Officer Standards and Training Director as estimating that as many as 30% of the sexual misconduct cases his agency investigates are not criminally prosecuted. The investigation also revealed that where prosecutions do take place, they are for misdemeanors.<sup>xvii</sup>

Other studies found that up to 2 in 5 young women reported sexual harassment by law enforcement,<sup>xviii</sup> and that young women of color, low income women, lesbian and transgender women, and otherwise marginalized women – as well as men and transgender people - are particularly vulnerable to sexual misconduct by law enforcement.<sup>xix</sup> Sexual harassment and assault have been reported to be particularly pervasive during traffic stops and in the context of police cadet programs intended to engage youth from the community.<sup>xx</sup> It is also reported to take place with alarming frequency in the context of responses to requests for assistance or investigation of domestic violence or sexual assault.<sup>xxi</sup>

Sexual harassment and assault by law enforcement officers may take many forms, including:

- inappropriate or sexual comments made to passersby, during traffic or street stops, searches, including strip searches, or police custody;
- unnecessary contacts/actions taken by officers for personally and/or sexually motivated reasons such as unwarranted call backs to crime victims, or making a traffic stop to get a closer look at the driver for non-professional reasons, or pressuring individuals to provide their phone number or other contact information in order to contact them for non-law enforcement purposes;
- extorting sexual favors in exchange for promises of leniency;
- inappropriate touching during stops, searches and detention;

- inappropriate questions or conversation about individuals' sexual orientation, up to and including implicit and explicit threats of sexual assault made to lesbian and bisexual women to "correct" their sexual orientation;
- unlawful strip searches, including searches to assign gender or humiliate or degrade transgender and gender nonconforming people;
- forcible or coercive sexual conduct, including rape.<sup>xxii</sup>

Sexual misconduct, while not justified by any lawful purpose, is by no means an isolated phenomenon, and is facilitated by the authority vested in law enforcement officers, and therefore requires a policy response by law enforcement agencies.<sup>xxiii</sup>

## RECOMMENDATIONS

### A. *Civil Rights Enforcement*

#### 1) **Pass, effectively implement, and enforce gender and sexuality-inclusive anti-profiling measures**

- The Administration should immediately **expand the protections of the Guidance for Federal Law Enforcement Agencies** issued by the U.S. Department of Justice in December 2014 to reach all federal and federally funded law enforcement activities, including those that target Muslim, Arab, South Asian and Sikh communities and which take place at the nation's borders.
- Local law enforcement agencies should be required, as a condition of receipt of federal funding, to **adopt, effectively implement, and enforce prohibitions against profiling consistent with the Guidance for Federal Law Enforcement Agencies on the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation and Gender Identity** issued by the U.S. Department of Justice in December 2014. State and local profiling bans should incorporate an **independent enforcement mechanism**.
- The Administration should work with Congress toward the passage of an **End Racial Profiling Act that includes protections against profiling on the basis of gender, sexual orientation, and gender identity**.

#### 2) **End Sexual Harassment and Assault by Law Enforcement Officers**

As documented by Amnesty International, the International Association of Chiefs of Police, the Cato Institute, and independent researchers, sexual harassment and assault by law enforcement officers is an often invisible but pervasive practice requiring immediate adoption and effective enforcement of policies, training, oversight and disciplinary practices.<sup>xxiv</sup>

- Federal law enforcement agencies should **adopt policies aimed at documenting, preventing, and addressing sexual harassment, abuse, and assault by local law enforcement agents** which are consistent with the recommendations of the IACP.
- The US Department of Justice should **condition federal funding to local law enforcement agencies on adoption of policies** aimed at documenting, preventing, and addressing sexual harassment, abuse, and assault by local law enforcement agents consistent with the recommendations of the IACP.



- The US Department of Justice should **aggressively pursue enforcement of existing PREA standards for police lock-ups**, clarify that the definition of “lock-ups” contained in the standards includes police cars and other temporary locations of police detention, and initiate new rulemaking that would more closely harmonize the PREA provisions pertaining to police lockups with those pertaining to adult facilities, including augmenting provisions concerning access to victim advocates, response planning, training and education, and screening for risk of sexual victimization and abusiveness, to police lock-ups.

### 3) End the use of condoms as evidence of all prostitution-related crimes

Use of the mere possession or presence of condoms as evidence of any prostitution-related offense serves as a tool of racial profiling of women of color, and acts as a powerful disincentive to carrying, distributing and sharing condoms among populations at high risk of police profiling and discriminatory policing such as women and LGBTQ of color, who are also at high risk of HIV and other sexually transmitted infections.<sup>xxv</sup> It also encourages people engaged in sex trafficking to deny access to condoms to people they are exploiting – placing trafficking victims at even greater risk.<sup>xxvi</sup>

- The Administration should, consistent with the recommendation of the Presidential Advisory Commission on HIV/AIDS, **issue and publicize guidance to federal, state and local law enforcement agencies condemning the reliance on mere possession or presence of condoms as evidence of intent to engage in criminal activity**, and encouraging agencies to adopt policies prohibiting this practice.

### 4) Establish nationwide standards for treatment of LGBT people in custody

In the absence of policies prohibiting discrimination based on sexual orientation and gender identity and clear policies governing the determination of gender for the purposes of arrest processing, LGBT people in the custody of local law enforcement, including in police lock-ups, all too often experience unlawful, unnecessary and humiliating searches to assign gender, homophobic and transphobic discrimination and abuse, and unsafe placement.<sup>xxvii</sup>

- In consultation with groups who have successfully advocated for local policies, the US Department of Justice should **develop and promulgate national standards for local law enforcement agencies relating to placement, searches, and interactions with transgender and gender non-conforming individuals** consistent with the provisions of consent decrees entered into with the New Orleans Police Department and the Puerto Rico Police Department, and make adoption of policies consistent with the guidance a condition of receipt of federal funding.

#### B. *Use of Force*

Where **special prosecutors** or independent investigatory bodies are established to respond to incidents of police killings and use of excessive force, they should pay special attention to incidents involving women of color, and their **jurisdiction should include investigation of allegations of police rape and sexual assault**.

#### C. *Civilian Oversight*

Independent and vigorous civilian oversight is essential to effective enforcement of changes to policing policies. Additionally, civilian oversight bodies must be representative of and responsive to the experiences of communities directly impacted by discriminatory policing.

- Civilian oversight bodies must develop expertise and commitment to receiving, analyzing and responding to complaints of sexual harassment and assault by law enforcement agencies, ensure that complainants receive appropriate support and referrals, and develop campaigns to raise public awareness of this form of police misconduct and abuse. Additionally, given the reluctance of victims of sexual assault to come forward to make complaints, routine spot checks and “stings” should be employed to detect and deter sexual harassment and abuse by police.
- Civilian oversight bodies should be charged with regularly analyzing data on a range of police department practices to determine if there are disparities based on race, age, gender, gender identity, or sexual orientation in enforcement practices and provided with sufficient resources to do so. Information relating to sexual orientation and gender identity of complainants must be collected on a voluntary and anonymous basis, after informed consent, and analyzed separately from any identifying information regarding the complainant.
- Individuals should be offered the opportunity to file complaints anonymously in order to ensure that individuals can do so without fear of retaliation or further abuse. Oversight bodies should accept and vigorously investigate complaints filed by third parties and organizations on behalf of individuals.

#### *D. Data Collection*

No official data is currently available regarding the number of rapes and sexual assaults committed by law enforcement officers in the U.S. Statistics regarding racial profiling and physical brutality by law enforcement officers do not include information on the number of allegations, complaints, or incidents of rape, sexual assault, sexual harassment or coerced sexual conduct by police officers. Similarly, information gathered by the federal government on rape and sexual assault does not include information about rapes committed by police officers and other law enforcement agents.

- Questions concerning sexual harassment and assault by law enforcement officers should be added to the Bureau of Justice Statistics Police Contact Survey and to the Office of Victims of Crime National Intimate Partner and Sexual Violence Survey;
- Data collected concerning stops, searches, use of force, police killings, and arrests must be disaggregated by gender and race in order to uncover patterns of profiling and police violence against women of color;
- In order to protect the privacy and dignity of the people they come into contact with, law enforcement agents should never be charged with collecting data relating to actual or perceived sexual orientation or gender identity during police interactions.

Respectfully submitted,

Andrea J. Ritchie, Soros Justice Fellow, [andrea.j.ritchie@aol.com](mailto:andrea.j.ritchie@aol.com), (646) 831-1243

- 
- <sup>i</sup> Andrea J. Ritchie, *Law Enforcement Violence Against Women of Color*, in *Color of Violence: The INCITE! Anthology* (South End Press 2006); Rod K. Brunson and Jody Miller, “Gender, Race and Urban Policing: The Experiences of African American Youth,” *Gender & Soc’y* 20: 531 (2006); Visher, C. A., Gender, police arrest decisions, and notions of chivalry, *Criminology* 21:5-28 (1983); see also Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, *Queer (In)Justice: The Criminalization of LGBT People in the United States* (Boston: Beacon Press, 2011); Kathryn E. W. Himmelstein and Hannah Brückner, “Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study,” *Pediatrics* 127 (1) (2011): 49-57; Brett G. Stoudt, Michelle Fine, and Madeline Fox, *Growing Up Policed in the Age of Aggressive Policing Policies*, 56 N.Y.L. Sch. L. Rev. 1331 (2011); Amnesty International, *Stonewalled: Police Abuse and Misconduct Against LGBT People in the United States* (Washington: Amnesty International, 2005), available at <http://www.amnesty.org/en/library/asset/AMR51/122/2005/en/2200113d-d4bd-11dd-8a23-d58a49c0d652/amr511222005en.pdf>.
- <sup>ii</sup> R. Lundman and R. Kaufman, *Driving While Black: Effects of Race, Ethnicity and Gender on Citizen Reports of Traffic Stops and Police Action*, *Criminology* 41(1) 195-220 (2003).
- <sup>iii</sup> New York Civil Liberties Union, *Women Demand End to Discriminatory NYPD Stop-and-Frisk*, Press Release, April 3, 2013; Women of Color Policy Network, *Women of Color: Two-Thirds of all Women in New York City Still Invisible in Policy - The 2nd Annual Report on The Status of Women of Color in NYC*, Wagner Institute for Public Policy at New York University (2003).
- <sup>iv</sup> See e.g., Shana Judge and Mariah Wood, *Racial Disparities in Enforcement of Prostitution Laws*, available at: <https://appam.confex.com/appam/2014/webprogram/Paper11163.html>; Noah Berlatsky, *Black Women Profiled as Prostitutes in New York City*, Reason, October 1, 2014, available at: <http://reason.com/archives/2014/10/01/nypd-profiles-sex-workers-too>; ACLU, Break the Chains and the Brennan Center at NYU, *Caught in the Net: The Impact of Drug Policies on Women and Families* (2005), available at: [https://www.aclu.org/files/images/asset\\_upload\\_file431\\_23513.pdf](https://www.aclu.org/files/images/asset_upload_file431_23513.pdf); Women of Color Policy Network, *supra* note ii; U.S. General Accounting Office, *Better Targeting of Passengers for Personal Searches Could Produce Better Results* (Washington D.C.: U.S. General Accounting Office 2000).
- <sup>v</sup> Ritchie, *supra* note i.
- <sup>vi</sup> Michael Roberts, *Jessie Hernandez, Teen Killed By Denver Cops: Protests Over Alleged Police Violence*, [http://blogs.westword.com/latestword/2015/01/jessie\\_hernandez\\_killed\\_denver\\_police.php](http://blogs.westword.com/latestword/2015/01/jessie_hernandez_killed_denver_police.php)
- <sup>vii</sup> John Counts, *40 Year Old Woman Fatally Shot By Ann Arbor Police Officer Identified*, MI News November 11, 2014, available at: [http://www.mlive.com/news/ann-arbor/index.ssf/2014/11/ann\\_arbor\\_police\\_shooting\\_name.html](http://www.mlive.com/news/ann-arbor/index.ssf/2014/11/ann_arbor_police_shooting_name.html)
- <sup>viii</sup> Tom Beres, *Woman’s Death in Police Custody Ruled a Homicide*, USA Today January 2, 2015, available at: <http://www.usatoday.com/story/news/nation/2015/01/02/womans-death-in-police-custody-ruled-a-homicide/21218595/>
- <sup>ix</sup> Kirstan Conley, Leonica Valentine and Daniel Prendergast, New ‘chokehold’ video shows NYPD scuffle with pregnant woman July 28, 2014, <http://nypost.com/2014/07/28/new-chokehold-video-shows-nypd-scuffle-with-pregnant-woman/>.
- <sup>x</sup> John Marzulli, Laura Dimon, Ginger Adams Otis, *Naked Brooklyn woman dragged from apartment, left topless in hallway for minutes by NYPD officers*, August 1, 2014, NY Daily News, available at: <http://www.nydailynews.com/new-york/brooklyn/nypd-officers-drag-naked-brooklyn-woman-apartment-video-article-1.1889292>
- <sup>xi</sup> Jim Hoffer, *Investigation: Woman Claims Police Brutality Against NYPD Officer*, ABC News, August 1, 2014, available at: <http://7online.com/news/investigation-woman-claims-police-brutality-against-nypd-officer/229978/>

- 
- <sup>xii</sup> *Watchdog Group: Officer Seen Throwing Pregnant Woman To Ground In Sunset Park*, CBS News, September 23, 2014, available at: <http://newyork.cbslocal.com/2014/09/23/watchdog-group-officer-seen-throwing-pregnant-woman-to-ground-in-sunset-park/>
- <sup>xiii</sup> Stinson, Philip M.; Liederbach, John; Brewer, Steven L.; and Mathna, Brooke E., *Police sexual misconduct: A national scale study of arrested officers* (2014), Criminal Justice Faculty Publications. Paper 30, available at: [http://scholarworks.bgsu.edu/crim\\_just\\_pub/30](http://scholarworks.bgsu.edu/crim_just_pub/30); International Association of Chiefs of Police, *Addressing Sexual Offenses and Misconduct by Law Enforcement Officers: An Executive Guide* (Virginia: International Association of Chiefs of Police, 2011), available at: <http://www.theiacp.org/Portals/0/pdfs/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf>; Cato Institute, *National Police Misconduct Reporting Project Annual Report* (2010), available at: <http://www.policemisconduct.net/statistics/2010-annual-report>; Irlbeck, Dawn and Samuel Walker. "Police Sexual Abuse of Teenage Girls: A 2003 Update on 'Driving While Female'" University of Nebraska at Omaha, Department of Criminal Justice, Police Professionalism Initiative (June 2003), available at: <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2003.pdf>; Samuel Walker and Dawn Irlbeck, *Driving While Female*, Police Professionalism Initiative, University of Omaha (2002), available at: <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2002.pdf>
- <sup>xiv</sup> CATO Institute, *National Police Misconduct Reporting Project*, 2010 Annual Report, available at: <http://www.policemisconduct.net/statistics/2010-annual-report/>
- <sup>xv</sup> R. L. Goldman and S. Puro, *Revocation of Police Officer Certification*, 45 St. Louis L. J. 541, 563, n.142 (2001).
- <sup>xvi</sup> Timothy Maher, *Police Sexual Misconduct: Officers' Perceptions of its Extent and Causality*, Crim. Just. Rev. 28(2):355 (2003).
- <sup>xvii</sup> L. Rosetta and N. Carlisle, *Sexual Misconduct by Officers: A Third Might Go Unprosecuted*, Salt Lake City Tribune, October 29, 2006.
- <sup>xviii</sup> Fine, M., N. Freudenberg, Y. Payne, T. Perkins, K. Smith, and K. Wanzer, "Anything can happen with police around": Urban youth evaluate strategies of surveillance in public places. *Journal of Social Issues* 59:141-58 (2003);
- <sup>xix</sup> Stinson et al., *supra*, note v; Lambda Legal, *Protected and Served? Survey of LGBT/HIV Contact with Police, Courts, Prisons, and Security* (2014), available at [www.lambdalegal.org/protectedandserved](http://www.lambdalegal.org/protectedandserved); IACP, *supra*; Jaime M. Grant, Lisa A. Mottet, and Justin Tanis, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), available at [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf); Kraska, P. B., and V. E. Kappeler, "To serve and pursue: Exploring police sexual violence against women.," *Justice Quarterly* 12:85-112 (1995).
- <sup>xx</sup> Irlbeck, Dawn and Samuel Walker. "Driving While Female: A National Problem in Police Misconduct." University of Nebraska at Omaha, Department of Criminal Justice, Police Professionalism Initiative. (March 2002), available at: <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2002.pdf>; Irlbeck, Dawn and Samuel Walker. "Police Sexual Abuse of Teenage Girls: A 2003 Update on 'Driving While Female'" University of Nebraska at Omaha, Department of Criminal Justice, Police Professionalism Initiative (June 2003), available at: <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2003.pdf>.
- <sup>xxi</sup> Nancy Phillips and Craig R. McCoy, *Police Turned Predators*, a series by the Philadelphia Inquirer, August 2006, available at: [http://www.philly.com/philly/news/special\\_packages/inquirer/Police\\_Turned\\_Predators.html](http://www.philly.com/philly/news/special_packages/inquirer/Police_Turned_Predators.html)
- <sup>xxii</sup> See IACP, *supra* note v; Amnesty International, *supra* note i.

---

<sup>xxiii</sup> Stinson et al., *supra* note v; IACP, *supra* note v.

<sup>xxiv</sup> Stinson, Philip M.; Liederbach, John; Brewer, Steven L.; and Mathna, Brooke E., *Police sexual misconduct: A national scale study of arrested officers* (2014), Criminal Justice Faculty Publications. Paper 30, [http://scholarworks.bgsu.edu/crim\\_just\\_pub/30](http://scholarworks.bgsu.edu/crim_just_pub/30); International Association of Chiefs of Police, *Addressing Sexual Offenses and Misconduct by Law Enforcement Officers: An Executive Guide* (Virginia: International Association of Chiefs of Police, 2011), available at: <http://www.theiacp.org/Portals/0/pdfs/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf>; Cato Institute, *National Police Misconduct Reporting Project Annual Report* (2010), available at: <http://www.policemisconduct.net/statistics/2010-annual-report>; Samuel Walker and Dawn Irlbeck, *Driving While Female*, Police Professionalism Initiative, University of Omaha (2012), available at: <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2002.pdf>.

<sup>xxv</sup> Human Rights Watch, *Sex Workers at Risk: Condoms as Evidence of Prostitution in Four U.S. Cities*, (2012) available at [http://www.hrw.org/sites/default/files/reports/us0712ForUpload\\_1.pdf](http://www.hrw.org/sites/default/files/reports/us0712ForUpload_1.pdf); Acacia Shields, *Criminalizing Condoms: How Policing Practices Put Sex Workers at IV Services at Risk in Kenya, Namibia, Russia, South Africa, the United States, and Zimbabwe* (New York: Open Society Foundations, 2012), available at <http://www.opensocietyfoundations.org/reports/criminalizing-condoms>; PROS Network and Leigh Tomppert, *Public Health Crisis: The Impact of Using Condoms as Evidence of Prostitution in New York City*, (New York: PROS Network and Sex Workers Project, 2012), available at <http://sexworkersproject.org/downloads/2012/20120417-public-health-crisis.pdf>;

<sup>xxvi</sup> Florrie Burke (founder of national Freedom Network and recipient of the inaugural Presidential Award for Extraordinary Efforts to Combat Trafficking in Persons from President Barack Obama), *Forced Into Prostitution and Denied a Lifeline*, Huffington Post May 15, 2013, available at: [http://www.huffingtonpost.com/florrie-burke/forced-into-prostitution-\\_b\\_3279937.html](http://www.huffingtonpost.com/florrie-burke/forced-into-prostitution-_b_3279937.html)

<sup>xxvii</sup> National Prison Rape Elimination Commission, “National Prison Rape Elimination Commission Report” (2011), available at [http://static.nicic.gov/UserShared/2013-03-29\\_nprec\\_finalreport.pdf](http://static.nicic.gov/UserShared/2013-03-29_nprec_finalreport.pdf); Mogul et al., *supra* note ii; Amnesty International, *supra* note ii.



# THE NATIONAL CENTER FOR CAMPUS PUBLIC SAFETY

Kim Vansell, Director

## TESTIMONY

### President's Task Force on 21<sup>st</sup> Century Policing

Thank you for the opportunity to submit testimony on the topics of Policy and Oversight and Technology and Social Media for consideration by the Task Force. The National Center for Campus Public Safety (NCCPS) was created to connect institutions of higher education with available federal and non---federal resources, and with each other, to identify and prioritize the needs of the field, and develop comprehensive responses to facilitate collaboration around issues of campus public safety.

As a clearinghouse of information for campus public safety and emergency managers, the NCCPS is in a position to observe national trends in the challenges campus communities face when addressing new and emerging critical safety issues, while ensuring they have adequate resources to address the full spectrum of potential incidents.

#### Policy and Oversight

Campus police and public safety professionals have engaged in community policing for decades. The campus environment provides excellent opportunities for fostering strong relationships between law enforcement and the multicultural communities they serve and protect, as well as strengthening public trust and promoting effective crime reduction. Across the nation, campus law enforcement agencies enjoy an on---going collaborative relationship with faculty, staff, and students. There are numerous examples of not only on---campus coalitions, but also coalitions with officials and representatives from host municipalities and local service providers. Campuses and communities have worked successfully to coordinate efforts in identifying and developing comprehensive strategic plans to apply an environmental strategies approach to crime prevention and reduction, as well as behavioral threat management.

The changing demographics of the American population are reflected in increasingly diverse campus communities. This diversification occasionally results in tension between community members along racial, religious, ethnic and sexual orientation



lines. At times, tension may also exist between community members and campus law enforcement. Consistent with the tenets of community policing, a number of campus law enforcement agencies have dedicated officers to serve as liaisons with campus groups representing various interests. This approach can, among other things, serve as an early warning system for rising tensions. While campuses may have on-site resources to assist with community tensions, several campuses have availed themselves of the resources provided by the U.S. Department of Justice Community Relations Service (CRS). Ideally, the CRS is called upon to serve in a proactive role before tensions rise to the level of damaging actions. However, CRS can also assist campuses after the fact to reduce tensions, and identify a pro-social path forward.

Large-scale civil unrest is another challenge that our campus law enforcement agencies have experience with. Over the last five decades, campus law enforcement agencies have learned and incorporated many valuable lessons for balancing the constitutional rights of our citizens to peacefully protest with the vital need to maintain public safety. The approaches taken by campus law enforcement to prevent and respond to unlawful civil disorder may hold lessons transferrable to state and local law enforcement agencies.

The outcome of these collaborations is increased awareness and public trust, as well as experiential learning opportunities for students. Highlighting these collaborative efforts/models could show examples of the public safety community at large establishing community-based relationships.

In addition to effective collaboration strategies, higher education institutions also provide numerous resources to the communities in which they reside. College campuses are rich supplies of human resources, as students engage in their topic areas of study. Numerous communities benefit from students' engagement in their community, varying from research to service learning. This model of student engagement is also incorporated into policing services. Campus police and their communities have benefited from partnering with students in academic classes to conduct problem-solving research, maximize resources, assist in strategic planning, provide cultural diversity opportunities and education, and participate in citizen police academies.

Higher education institutions are facilitators of learning, and can host discussions of large populations dealing with similar challenges. Out of these discussions, partnerships and mentorships can be developed and effective promising practices measured and shared. In addition, higher education institutions can investigate technological advances to be used by law enforcement for strategic, innovative purposes.

Community crime reduction strategies include law enforcement working closely with prevention and harm reduction professionals, widely available on college campuses, to further understanding of a comprehensive, community-wide environmental strategies approach. In addition, campuses have developed strategic methods to partner with local school districts to share prevention education

strategies and mentorships. Academic departments are infusing prevention education messages throughout their curriculum instruction to ensure the next generation of educators and service providers have a basic understanding of comprehensive, community---wide environmental strategy approaches to a variety of challenges. Through this process, the role law enforcement plays becomes part of the larger strategic plan and relationships develop throughout populations as community members work together to resolve local challenges. By identifying and expanding upon what currently exists in the areas of curriculum infusion and mentorship programs, we can continue to educate the broader community around a variety of social issues.

University campuses should also be modeling civil rights enforcement to local school districts, specifically as it pertains to Title IX compliance, behavioral threat management, and violence prevention. Many colleges and universities have behavioral threat management programs that involve campus security and local law enforcement; administration; counseling; judicial officers; attorneys; student affairs; faculty; risk management; human resources; and students. Federal cooperative agreements and grants have funded many of the training courses and seminars offered for campus personnel on this subject. In the true spirit of community policing, behavioral threat assessment relies upon collaboration and partnerships within in the community. Fostering relationships between campuses and school districts in their communities will provide the opportunity for mentorship in creating and sustaining behavioral threat assessment programs and allow for the sharing of information regarding program and civil rights enforcement lessons learned and effective practices.

#### Recommendations:

- Encourage state, local and campus law enforcement agencies to develop early warning systems to identify community tensions, and to utilize all appropriate and available resources to resolve those tensions, including the resources of the CRS and the Office of Community Oriented Policing Services (COPS), as well as comparable resources at the state and local level, and in the non---profit sector.
- Encourage state and local law enforcement agencies to examine and replicate, as appropriate, the strategies employed by campus public safety agencies to prevent and respond to mass civil unrest. Examples of promising practices are included in the Bureau of Justice Assistance document, "Maintaining Safety and Order on College and University Campuses During Protests and Demonstrations: Promising Practices."<sup>i</sup>
- Encourage state and local law enforcement agencies to partner with colleges and universities to identify the root causes of police---community tensions, and work with all stakeholders to identify solutions that work for a specific community.
- Continue to support efforts to decrease fragmentation and communicate



---

federal and non---federal resources to communities, including college campuses.

- Highlight campuses as models of relationship building and collaborative networks.
- Promote universities as research providers and facilitators of innovative practices for crime reduction and developing community trust.
- Provide universities with resource incentives to work strategically and innovatively to enhance local community problem solving and using technology to enhance crime prevention and community interaction.
- Identify existing partnerships that exist where institutions of higher education are working with local school districts for prevention education, building relationships of trust, and modeling civil rights enforcement.
- Support opportunities for colleges to provide mentorship to local school districts and educators, as well as developing standards for including critical messaging into higher education academic curriculum.

### Social Media

The use of social media by police and public safety agencies has grown commensurate with its prevalence as a pathway for communication. The International Association of Chiefs of Police's Center for Social Media identifies several important characteristics that make the use of social media by police an important strategy for building relationships. These include the immediacy of the message and the ability to therefore control the conversation better; the facilitation of interaction and engagement by the agency and its community; the free accessibility of social media by the community; and the manner in which social media can be integrated into the agency's communication strategy.

Through social media, law enforcement agencies are able to engage the citizens they serve in a manner never before possible. Law enforcement is using social media to establish an important relationship and trust with the community. Agencies provide information about local crime; share suspect descriptions and relevant safety concerns; establish trust through regular, proactive conversation; invite community members to events where people can meet police; ask for assistance locating suspects; and announce police actions alongside a range of other uses that put information literally into the hands of the community at very little financial cost, if any. The vast majority of people engage in social media through mobile devices, smart phones and other handheld devices. For example, roughly 85% of Twitter uses access the social media service through a mobile device and 46% of Internet users are on Facebook.

There are other ways, however, in which law enforcement should engage social media. Just as police agencies can use social media to share information, so can and do those in the community who carry on with criminal intentions. Law enforcement's monitoring of social media for these purposes is gaining greater popularity.

Not to be overlooked for its value, social media monitoring also plays a significant role. Scanning social media for acts of violence, self-harm, threats, and criminal activity, amongst other uses, can't be dismissed. Using social media as a source of intelligence in supporting the agency's mission to protect its community is a critical tool. It's time to employ the "digital beat cop" much in the way we do the beat cop.

Applications are numerous: criminal interdiction teams use social media to identify drug traffickers and buyers, while tracking fencing operations for stolen goods; sex crimes investigators actively monitor offenders public social media feeds for indications of recidivism; tactical teams scan a location for publicly available social media in anticipation of a hostage rescue or breach looking for information being shared by the target or the hostage/victims.

The bottom line is that police agencies should continue to utilize social media as not only a tool to communicate with their communities, but as a source of information to gather from their communities. There is a tremendous amount of information available in the digital cloud, and law enforcement has only but to look.

#### Recommendations:

- Encourage the use of technology, including social media and smartphone applications for two-way communication with the community.
- Support the use of social media intelligence to enhance crime prevention and intervention.
- Support identification and evaluation of social media intelligence gathering technologies.

---

<sup>i</sup> U.S. Department of Justice Bureau of Justice Assistance, Federal Bureau of Investigation, U.S. Department of Homeland Security. "Maintaining Safety And Order On College And University Campuses During Protests And Demonstrations: Promising Practices." (2013). Print.



Mr. Ronald L. Davis  
Executive Director  
President's Task Force on 21<sup>st</sup> Century Policing

Mr. Charles H. Ramsey  
Co-Chair  
President's Task Force on 21<sup>st</sup> Century Policing

Ms. Laurie O. Robinson  
Co-Chair  
President's Task Force on 21<sup>st</sup> Century Policing

Written Testimony of the  
National Council of Churches of Christ in the USA

President's Task Force on 21<sup>st</sup> Century Policing  
Policy and Oversight and Technology and Social Media

Submitted by

Mr. Jim Winkler  
President and General Secretary



Thank you again for the National Council of Churches' (NCC) opportunity to weigh in on the second phase of the information gathering process in your efforts to identify best practices and make recommendations to President Obama on the issue of 21<sup>st</sup> century policing. We applaud the President's establishment of the task force and the desire to look at ways to reform the current criminal justice system.

In the past year there has been a spotlight on our country's policing policies and the disparate negative impact those policies have had on people of color and the economically disenfranchised. We have seen national and international outrage in response to unarmed African American men, women and even children being shot, beaten or harshly treated by police for minor infractions. We are a country that can boast of being a super power and number one in the world in innovation, sports, economics, and military might. But we are also the world leader in incarcerating our own people. We are a nation founded on fundamental principles of freedom – freedom to assemble, freedom of speech and freedom to protest. Yet we have seen those freedoms compromised in conflicts between civilians and the local police and government entities. We have seen police departments respond to protest action with military arsenal that should be reserved only for enemy combatants and not displeased citizens expressing their discontent.

The establishment of this task force is born out of the civil unrest resulting from long term over criminalization and the militarization of local police. The NCC is a council of 37 member communions, over 100,000 churches and 40 million people grounded in the belief that all human beings are created in the image of God and should be treated with dignity and respect. As a people of faith and hope we pray that the efforts of the task force will lead us to a more perfect union at the local, state and national level. To this end we make the following recommendations.

### **Policy and Oversight**

- **Influence of police culture**
  - o **Overhaul the justice system such that the end goal is not primarily punishment but rather reconciliation and restoring balance.**
  - o **Address the “us” verses “them” nature of engagement between police and citizens.**
  - o **A justice system should address disruptions in the balance of society. Response to disruptions should be commensurate with the harm caused.**
  - o **Incorporate conflict transformation training as part of police training and a standard alternative or additional option for addressing offenses and criminal infractions.**



- o **Reward police departments and officers for effective community policing strategies and not just arrest and ticketing quotas.**
  - o **Promote a culture of mutual respect internally and externally. Much of the recent unrest between police and the community is grounded in a feeling by both that the other is not respected or being heard.**
  - o **Civilian oversight boards should be incorporated to ensure that law enforcement policies have civilian input and buy-in**
- **Early intervention systems**
  - o **The inherent racial disparity in the system needs to be addressed.**
  - o **Mandatory training and continuing updates for all law enforcement on issues of cultural sensitivity, interaction with the mentally ill, and responding to sexual assaults.**
  - o **Provide incentives for police departments that are culturally and ethnically diverse and also includes a cross section of faith traditions.**
  - o **Address patterns of excessive force, racism, and misogynistic behavior with appropriate training, counseling or disciplinary action (up to and including termination).**
- **Use of force**
  - o **In cases where there is a police shooting and criminal charges are possible, the case should not be handled by the local prosecutor. A special prosecutor should be appointed or a community panel of representative stakeholders should review the case.**
  - o **Create a database for reporting police shootings, excessive force and death in custody - including demographics/profile. Make report available to public excluding names.**
  - o **Implement nationwide mandatory use of body cameras and provide federal funding for communities that cannot afford them.**
  - o **Police officers who do not wear their badges must provide business card with name and badge number and face disciplinary action if they fail to provide such information.**
  - o **Ensure that police have an avenue for addressing disparity and internal concerns without fearing retribution from peers and superiors**
  - o **Incorporate mandatory training in de-escalation tactics**



- **Mass demonstration/civil rights<sup>i</sup>**
  - o **The first priority is to protect civil rights and preserve human life.**
  - o **Police should attempt to engage protestors to determine if there is an amicable way to resolve the issue leading to the action.**
  - o **Military equipment and riot gear should not be used except for extreme circumstances.**
  - o **Arrest should be targeted to individual behavior and not entire groups or “mass” arrest.**
  - o **In every way possible there should be broad latitude to allow for freedom of assembly and expression.**
- **Military equipment**
  - o **Discontinue the 1033 program**
  - o **If not discontinued, the 1033 program should be revised to include more specific ways the equipment can and cannot be used. Military equipment should not be used against local communities exercising constitutional rights to protest.**
  - o **Require police departments to provide a report on how and why equipment was used and include a criteria in which the equipment can be confiscated.**
  - o **Military equipment should only be used as an absolute last resort when there is a threat to life and security that cannot be addressed by traditional policing efforts.**

### **Technology and Social Media**

- **Technology can be used to address infractions that do not require incarceration:**
  - o **GPS devices and even cell phones for checking in**
- **Taking into consideration applicable confidential information, data pertaining to disciplinary action, statistics, accolades, etc., of police departments should be accessible to the public.**



### **Overhaul the criminal justice system**

**Address the problem of over criminalization and the indiscriminate application of laws implemented by local police departments and the impact it has on communities and families**

- o **When one's time has been served for infractions against society he or she should be fully reintegrated into society.**
- o **Voting rights should be restored.**
- o **Returning citizens should be given access to social service resources that will help them acclimate to a life outside of jail and enhance the chance of success (i.e. access to jobs, social services, etc.).**

---

<sup>i</sup> Many of the points in this section are drawn from the "Proposed Rules of Engagement" from the website of the **Don't Shoot Coalition**, <http://www.dontshootstl.org/>.



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Washington, D.C. 20507**

**Office of the Chair**

**Written Testimony before the  
President's Task Force on 21<sup>st</sup> Century Policing**

**Jenny R. Yang, Chair  
U.S. Equal Employment Opportunity Commission**

On behalf of the U.S. Equal Employment Opportunity Commission, I thank Chairs Charles Ramsey and Laurie Robinson, Task Force members, and Executive Director Ronald Davis for inviting written testimony from the EEOC. We write to support the Task Force's efforts "to identify best practices and ... make recommendations to the President on how policing practices can promote effective crime reduction while building public trust."<sup>1</sup> In the wake of the events in Ferguson, New York City, Cleveland, and across the country, your efforts are timely and vital. I commend you on the success of the Task Force's first listening session and on your inclusion of workforce diversity as one of the strategies that will aid state and local law enforcement in building trust and legitimacy in the communities they serve and, ultimately, in achieving effective, community-oriented policing.

Promoting equality of opportunity in the public sector is vital to the EEOC's mission to stop and remedy unlawful employment discrimination in the workplace. We write to provide background on the EEOC's work to promote equality of opportunity in policing and to offer recommendations to assist police forces in drawing from the diversity of their community.

**EEOC AUTHORITY & RESOURCES**

Fifty years ago, Title VII of the Civil Rights Act of 1964 created the EEOC as the leading government agency charged with enforcing civil rights protections in the workplace. Today, we have 53 field offices nationwide, and we enforce federal laws prohibiting discrimination on the basis of race, color, religion, sex, national origin, age (40 or older), disability or genetic information.<sup>2</sup> Our jurisdiction includes private, federal, and public sector workplaces, which include state and local law enforcement agencies.<sup>3</sup>

---

<sup>1</sup> Executive Order 13684 to Establish the President's Task Force on 21<sup>st</sup> Century Policing (December 18, 2014), available at <https://www.federalregister.gov/articles/2014/12/23/2014-30195/establishment-of-the-presidents-task-force-on-21st-century-policing>.

<sup>2</sup> EEO laws also prohibit retaliation on the basis of complaining about discrimination, filing a charge of discrimination, or participating in an employment discrimination investigation or lawsuit.

<sup>3</sup> The EEOC's federal sector enforcement program covers federal agencies, including federal law enforcement agencies. The Commission is authorized to hold hearings on EEO complaints against federal



The EEOC shares enforcement authority for public sector employers with the Department of Justice's Civil Rights Division ("CRT") under Title VII, the Americans with Disabilities Act ("ADA"), and the Genetic Information Nondiscrimination Act ("GINA"). Generally, the Commission receives, investigates, and may attempt to mediate charges of discrimination against public employers. Where the Commission finds reasonable cause to believe an unlawful employment practice has occurred, it attempts to conciliate those charges. Commissioners may also file Commissioner's Charges against public employers. If conciliation of a charge fails, the EEOC refers the charge and its investigative file to CRT, which has authority to sue public employers. The EEOC also has authority under Title VII, ADA, and GINA to sue labor organizations that represent state and local employees or employment agencies that service state and local employers.<sup>4</sup>

Moreover, the Commission has the authority to receive, investigate, attempt to mediate, conciliate, and sue regarding a charge of discrimination against a public employer under the Age Discrimination in Employment Act of 1976 (ADEA) and receive, investigate, and sue under the Equal Pay Act of 1963 (EPA).

The EEOC is also authorized to collect workforce demographic data from employers with more than 100 employees. State and local government workforce data, including data from certain police departments, is captured on the EEO-4 form. The data of individual state and local government employers is not made public, but aggregate data may be shared to provide information about employment by race, ethnicity, and gender in various job groups and by salary bands within those job groups.

The EEOC is also charged with providing guidance and conducting training and outreach to promote equal employment opportunity and encourage voluntary compliance with the laws we enforce.

---

agencies and adjudicate appeals from federal agency administrative decisions. The EEOC also monitors and collects data on agencies' compliance with EEO laws, monitors and evaluates federal agency affirmative employment programs, and conducts education and outreach aimed reducing barriers to equal employment and EEO compliance. As an example, in Fiscal Year 2013, the EEOC found in favor of a class of female agents in a pattern or practice action against the Drug Enforcement Agency involving discrimination in foreign assignments and promotions on the basis of sex. *Garcia v. Dep't of Justice*, EEOC Appeal No. 0120122033, 2013 WL 2903347 (June 7, 2013).

<sup>4</sup> As an example, in Fiscal Year 2012, the EEOC filed suit against Jacksonville Association of Firefighters (Local 122 of the International Association of Fire Fighters). The EEOC alleged that the union negotiated with the City of Jacksonville for a racially discriminatory written exam in the promotion process that it knew to have a disproportionate adverse impact on Black test takers. Case No. 3:12-cv-00491-MMH-TEM (M.D. Fla.). The Department of Justice filed a companion suit against the city. Case No. 3:12-cv-00451-TJC-MCR, (M.D. Fla.).

## IMPORTANCE OF EEO COMPLIANCE & DIVERSITY

The EEOC's Strategic Enforcement Plan prioritizes eliminating systemic barriers to hiring and recruitment in the public, private, and federal sectors under all of the laws we enforce.<sup>5</sup> These laws prohibit employers from using recruitment practices or selection procedures that have the purpose or effect of discriminating against individuals based on their protected characteristic(s).

As an example, Title VII permits employment tests to be used as long as they are not “designed, intended or used to discriminate” against covered individuals<sup>6</sup> and imposes restrictions on how tests are scored.<sup>7</sup> Title VII also prohibits employers from using facially-neutral tests or selection procedures that disproportionately exclude covered individuals where the tests or procedures are not “job-related and consistent with business necessity” for the position in question.<sup>8</sup> The Uniform Guidelines on Employee Selection Procedures (“UGESP”) were promulgated to be used by employers, including law enforcement agencies, to evaluate their selection practices and assess whether they are in compliance with the law.<sup>9</sup> The use of any selection procedure that has an adverse impact based on a category protected under Title VII will be considered discriminatory unless the procedure is job-related and consistent with business necessity, i.e. it has been properly validated,<sup>10</sup> or the use of the procedure is otherwise justified under federal law.<sup>11</sup>

Although EEO enforcement is distinct from the promotion of diversity in the workplace, the concepts are linked, as compliance with EEO laws will often lead to greater diversity in the workplace. Moreover, the absence of diversity is often a critical indicator of potential barriers to

---

<sup>5</sup> Available at <http://www.eeoc.gov/eeoc/plan/sep.cfm>.

<sup>6</sup> *Id.* at § 2000e-2(h).

<sup>7</sup> *Id.* at §2000e-2(l) (it is an unlawful employment practice “to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment-related tests on the basis of race, color, religion, sex, or national origin”). The ADA also addresses prohibited practices related to employment tests. *See* 42 U.S.C. §12112(b).

<sup>8</sup> 42 U.S.C. § 2000e-2(k)(1)(A)(1); *see Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971).

<sup>9</sup> 29 C.F.R. Part 1607; *see Albemarle Paper Co. v. Moody*, 422 U.S. 405, 431 (1975).

<sup>10</sup> *See, e.g., Isabel v. City of Memphis*, 404 F.3d 404, 413-14 (6th Cir. 2005) (City's use of a written test for promotion to police lieutenant resulted in a disparate impact on African Americans; City's procedure was not properly validated and therefore “had no business justification.”) UGESP instructs employers to rely upon “criterion-related validity studies, content validity studies or construct validity studies” to validate a selection procedure. 29 C.F.R. § 1607.5(A).

<sup>11</sup> *Id.* at §§ 1607.3, 1607.6; *see Officers for Justice v. Civil Serv. Comm'n*, 979 F.2d 721, 728 (9th Cir.1992) (“[B]efore utilizing a [selection] procedure that has an adverse impact on minorities, the City has an *obligation* pursuant to the *Uniform Guidelines* to explore alternative procedures and to implement them if they have less adverse impact and are substantially equally valid [to other options].”).

equal employment opportunity in the workplace. As witnesses testified during the first Task Force listening session, and as reported by the 1967 Kerner Commission, while a diverse police force will not alone ensure effective community policing or the protection of civil rights, a police force that reflects the community it serves can aid in building trust and legitimacy in the community. This can lead to higher quality and more effective law enforcement. The EEOC is highly interested in the work of the Task Force with respect to diversity, and we encourage the inclusion of diversity and EEO compliance in your final recommendations.

### DATA FROM THE FIELD

In Fiscal Year 2014, the EEOC received 1,152 charges against entities listed as “police” or “sheriff” departments.<sup>12</sup> The top basis for these charges was retaliation under all statutes (50.5 percent, with 43.6 percent alleging retaliation under Title VII alone), followed by discrimination on the basis of sex (36.5 percent), race (34.2 percent), disability (29.4 percent), and age (16.5 percent).<sup>13</sup> Sorted by issue raised, the top issues were harassment (34.5 percent), discriminatory terms and conditions of employment (33.2 percent), discriminatory discipline (20.4 percent), and reasonable accommodation related discrimination (12.3 percent). Promotion, assignment, intimidation, suspension, and hiring discrimination were all issues raised, but each category fell under 10 percent.<sup>14</sup>

Although the EEOC’s charge data provides insight into employment discrimination issues alleged, it should not alone be used to gauge the scope or severity of discrimination or a particular type of discrimination in any given sector. Many employees and job seekers do not take the step of filing charges and many others, especially in the case of recruitment and hiring discrimination, are not aware that a violation has occurred.<sup>15</sup> In contemplation of this, Congress authorized Commissioners to file charges under Title VII when they have reason to believe discrimination has occurred and similarly authorized the EEOC to file Directed Investigations under the EPA and ADEA.

The EEOC also utilizes its education and outreach programs to promote equal employment opportunity in the public sector. In Fiscal Year 2014, our program analysts conducted 43 trainings for state and local law enforcement agencies. These trainings focused on topics such as an overview of EEO laws, implicit bias, diversity and inclusion, employer responsibility and complaint resolution, and harassment. As a result of our nationwide presence, the EEOC has

---

<sup>12</sup> Although the EEOC's system does not separately track charges against police departments *per se*, we can track charges against entities which expressly contain the word "police" or "sheriff." While using this method somewhat undercounts the charges against police departments, some of which, for example, may only name the municipality involved, we do believe it constitutes a representative sample of the kinds of complaints being made.

<sup>13</sup> The percentages for charges in FY 2014 alleging EPA or GINA violations is under one percent.

<sup>14</sup> Also, some charges allege more than one basis or issue of discrimination.

<sup>15</sup> It should also be noted that not all charges will result in a finding of discrimination.

ongoing relationships with state and local governmental employers, sometimes in small localities where there is little federal presence and sometimes as an institutional partner with a larger employer. As an example, the Denver Field Office has partnered with the Denver Sheriff's Department to teach its curriculum on anti-harassment and bullying for new recruits. With the renewed focus on quality community policing and the role diversity plays in achieving it, the EEOC expects and is well positioned to form new and deeper partnerships that will benefit EEO enforcement, police departments, and the public alike.

## NEXT STEPS & RECOMMENDATIONS

### *EEOC Next Steps*

The EEOC is working with CRT, others at DOJ, and experts in the field to:

1. Identify instances in which the use of certain recruitment, hiring, and promotion practices in law enforcement may serve as barriers to equal employment opportunity;
2. Facilitate the development of best practices for EEO compliance and achieving and maintaining greater police force diversity; and
3. Develop and deploy effective EEO and diversity/inclusion training for different state and local law enforcement audiences, including department leadership, human resources, and hiring officials (including those in Civil Service Commissions who often design police hiring criteria), union leadership, and individual officers.

The EEOC will also continue evaluating charge and EEO-4 data for outreach and systemic administrative and legal enforcement opportunities.

### *Recommendations for Task Force*

We encourage the Task Force to:

1. Invite oral and written testimony on recruitment, hiring, and promotion practices that promote equal employment opportunity in policing;
2. Examine the qualities needed to be a successful police officer and identify relevant selection practices;
3. Encourage additional research to quantify the benefits of a diverse police force that reflects the community served;
4. Highlight those departments where diversity has proven an effective law enforcement strategy and highlight the approaches taken, as appropriate; and
5. Consider the use of grants to assist small and mid-sized police departments in conducting barrier analyses and taking proactive measures to comply with EEO law and achieve or maintain a diverse workforce.

### *Resources for the Task Force*

To aid the Task Force in its work, in the coming weeks, the EEOC and CRT will:

1. Recommend experts who can provide oral or written testimony on recruitment, hiring, and promotion practices that promote equal employment opportunity in policing; and
2. Submit a literature review on workforce diversity in police departments, including barriers, best practices, and job qualifications.

As resources permit, the EEOC can also provide the Task Force additional information on our charge and EEO-4 data.

### CONCLUSION

Thank you again for your consideration of this testimony and the important role diversity plays in ensuring 21<sup>st</sup> Century policing that meets the needs of our nation. The Commission looks forward to working with you.