

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

## **Policy and Oversight** **Submitted Public Comment Received by January 14-31, 2015** **Presented Alphabetically by Last Name**

### **Primary Source Documents**

This document contains all Primary Sources for public comment submitted to the Task Force for the listening session on Policy & Oversight. Twenty-five 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:** Submissions marked (email) are contained in the combined list of emails submitted not as a separate document.

#### **Public Comment for Policy & Oversight:**

1. Attard, Barbara: Former President-National Association for Civilian Oversight of Law Enforcement
2. Barnabei, Sandy: President-NASW NYC Chapter (email)
3. Barry, Dante: Executive Director-Million Hoodies
4. Berkow, Michael: Chief-Savannah PD
5. Briggs, Eli: Director of Government Affairs-NACCHO
6. Brown, Cheri: Executive Director-NCBI
7. Center for Popular Democracy
8. Chaires, Mark (email)
9. Chapa, Anthony: President-Hispanic American Command Officer Association
10. Cordell, LaDoris: Judge-Office of Independent Police Auditor
11. Foster, Lisa: Director-Access to Justice Initiative
12. Franklin, Neill: Lt.-Law Enforcement Against Prohibition
13. Gierach, James: Law Enforcement Against Prohibition
14. Gissiner, Mark: Past President-International Association for Civilian Oversight of Law Enforcement
15. Graves, Fatima: VP-National Women's Law Center
16. Kurz, David: Chief-Durham PD
17. Means, Pamela: President: National Bar Association
18. Petrides, Lynda: former police officer-Norwich PD (email)

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19. Quinn, Sue: Board Member-National Association for Civilian Oversight of Law Enforcement
20. Rea Desmond and Robin Masefield: Northern Ireland Policing Board
21. Ritchie, Andrea: LGBT Groups
22. Roley, Iris: Black United Front of Cincinnati
23. Johnny: Think Tank (3 Letters)
24. Twitter
25. Twitter

# **The President's Task Force on 21<sup>st</sup> Century Policing: Independent Oversight and Police Peer Intervention Training Programs that Build Trust and Bring Positive Change**

Please append to the written testimony submitted on 1/9/2015 by (NACOLE)  
NATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT  
Submitted by Barbara Attard, NACOLE Past-President

## **I. Introduction: The Violent Times We Face**

The current national focus on police killings of unarmed African American men brought about by “Black Lives Matter” is a powerful development that has brought long-overdue scrutiny of policing and use of force in the United States. This “special period” provides an opportunity for growth and positive development in police-community relations.

The tragic killing of Officers Wenjian Liu and Rafael Ramos in New York City should not be seen as an action connected to the Black Lives Matter demonstrations and the national focus on policing issues. It was the work of a mentally ill person. We cannot, as a nation, allow the deaths of these officers to divert the much needed focus on repairing police/community relations.

The reactionary response from police unions after the shooting of Officers Liu and Ramos was disappointing and serves to wedge a greater divide between police and the community. There needs to be a way to bridge this divide.

Police officials who turn a deaf ear to the important message being broadcast undermine police legitimacy and effectiveness, particularly at this time when communities nationwide are becoming more and more alienated from law enforcement.

What rings true is that there is an urgent need to find a way to integrate policing into the community—to find a way for police officers to connect in real ways with the communities they serve—to open their hearts and minds to the plight of those in minority and poor communities. The COPS program has strived for many years to this end, and I applaud and support COPS projects, yet it is clear that we have much more work to do in this area.

There is currently a troublesome juxtaposition in policing in the United States. While there is a nationwide call for police departments to become more in touch and integrated into the community, there is simultaneously a trend toward militarization in policing, both in tactics, as well as weaponry. At this time we are facing a world in which terrorism is a very real and apparent threat. Our police departments are purchasing weapons and conducting training to prepare to combat violent incidents of great magnitude. Much of this “militarization” is done behind closed doors—communities learn that their police departments have purchased drones or tanks after the fact. They are then in a position of having to fight to evaluate or undo a purchase or new tactics after they have been obtained, when there should have been an opportunity for members of the public to weigh in before a decision was made.

Police officers must balance threats on many levels—guns are ubiquitous on the streets of our cities. Terror is becoming a real threat. Yet policing must be constitutional and meted out in a fair and just manner. As officers approach members of the public, they must do so with respect. Our communities want their police departments to be there to protect them. And they want their officers armed at a level to ensure that they can handle threats that come their way. But, at the same time, communities must experience that officers conduct themselves in a respectful

manner, and should be able to weigh in to ensure that their police agency's standards for policing are in line with their own.

## **II. Options for Bridging the Gap—Independent Oversight and Police Peer Intervention Training**

### **A. Independent Community Oversight**

Community oversight provides positive options for connecting police departments and the communities they serve. As explained in depth in the NACOLE submission, independent, community based oversight brings legitimacy and provides invaluable insight and guidance to police agencies in many ways:

- through independent investigations (or review of internal investigations) of police misconduct complaints
- through policy review and recommendations
- through pattern and practice review and findings
- by providing a vehicle for communities to weigh in on policing through community meetings of commissions or boards

While oversight has been established in many cities and counties throughout the United States, there remain many communities that have no independent review. And, while many jurisdictions have oversight, oversight is not regulated or standardized and can vary widely from agency to agency. Most oversight agencies in the U.S. today are multifaceted “hybrids” that incorporate a combination of functions, and can include a community board or commission, investigation of police misconduct complaints, monitoring/auditing of a police department's internal investigations, or review of broader policy and training systems.

Regardless of the oversight structure set up in a particular jurisdiction, there are a number of factors that contribute to whether an approach will be successful. The components outlined below should be considered in adopting or strengthening oversight:

- **Independence**  
In order to succeed, the oversight body must be independent from special interest groups, police, and elected and other government officials. Oversight agencies should have the authority and funding to hire outside consultants, including independent counsel, as needed.
- **Support of Government Officials**  
Without the political will to support independent oversight, the agency will flounder and fight a constant uphill battle to address problems in the law enforcement agency it oversees.
- **Access to the Law Enforcement Agency and Government Officials**  
It is important for the integration of the oversight agency into the government structure that oversight practitioners have access to municipal or county government officials, along with the law enforcement agency involved.
- **Ample Authority**  
It is imperative that oversight organizations have ample authority to make a difference to positively impact the law enforcement agency under its jurisdiction and provide a credible service to the communities they serve.
- **Reviewing Police Policies, Training and Other Systemic Issues**

Policy review is widely seen as one of the most important aspects of an oversight program in that it can effect broad organizational change in the law enforcement agency. Systemic problems may surface through the investigation process, during an audit, or through testimony taken during community meetings.

- **Adequate Funding**

Oversight programs must have adequate funding and spending authority to complete the work outlined in the enabling legislation and to be effective in their efforts. Oversight agencies that investigate, audit, or monitor complaints must have funding to purchase and utilize databases to track all aspects of the process.

- **Core Qualifications for Effective Oversight**

In order to be effective and seen as legitimate in conducting police oversight, it is vital that practitioners have adequate training and experience to perform the work. In support of its training program for oversight professionals, the National Association for Civilian Oversight of Law Enforcement (NACOLE) has developed a set of core competencies that are central to effective oversight. The NACOLE website ([www.nacole.org](http://www.nacole.org)) provides a wealth of information about training recommendations for oversight practitioners.

- **Community/Stakeholder Support and Outreach**

It is important oversight agencies communicate about their work through community outreach, websites, reporting and other methods of communication, to keep the community (and all stakeholders) informed of how the process works and what the agency is doing to improve policing. Educational outreach should also clarify the limitations to the oversight agency's authority.

- **Transparency**

A major benefit of oversight is shining a light on otherwise closed institutions. Systematic reporting provides transparency and accountability to the community, and typically includes complaint analysis and other observations about the law enforcement organization and its practices.

- **Ethical Standards**

NACOLE has adopted a Code of Ethics to guide the practice of civilian oversight in promoting public trust, integrity, and transparency.

## **B. Police Peer Intervention (PPIT)—Ethics Training that Compels Officers to Practice “Critical Loyalty” and Connect to the Communities They Serve<sup>1</sup>**

Police Peer Intervention is a training program that teaches, in a practical and positive way, the powerful influence that police officers have on the conduct and behavior of their fellow officers. The training equips, encourages, and supports officers to intervene and prevent their colleagues from committing acts of serious misconduct and criminal behavior, particularly those directed against citizens. The basic premise is that police officers themselves, properly trained in ethical decision making and tactics of peer intervention, are an essential and too often overlooked

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<sup>1</sup> The concept of Police Peer Intervention Training, based in part on the work of Dr. Ervin Staub, was developed by a national working group made up of: Barbara Attard, M.A.; Everett Doolittle Ph.D.; Joel A. Dvoskin, Ph.D.; Mary E. Howell, Esq.; Erin Nelson, Psy.D.; Mike Quinn, Minneapolis P.D. Ret.; and Ted Quant, Loyola University.

resource in the effort to prevent misconduct by fellow officers. By teaching “critical loyalty,” how to recognize situations which require ethical decision making, and how to successfully intervene, officers are taught to be prepared psychologically and tactically for peer intervention as an essential part of their professional duties and for their own survival.

The vast majority of police officers are not themselves perpetrators of wrongdoing - perpetrators are a relatively small number of any force. While it is likely that only a small percentage of police officers are perpetrators of serious misconduct and criminal behavior, their influence is often significantly more pervasive than their mere numbers. Many, if not most officers, will, at some point in their career, find themselves caught between two very unsatisfactory choices. While they do not perpetrate serious misconduct or crimes themselves, they are often passive bystanders and observers of misconduct by fellow officers. In a functioning, well-adjusted organization with sound moral and ethical values, these officers would stay within appropriate boundaries themselves and perhaps even intervene on their own when confronted with incidents of especially egregious misconduct. However, in departments that tolerate or condone misconduct, the silence and passivity of bystanders helps to destroy the integrity of the department as a whole, and its reputation among the people they are supposed to serve and protect.

#### **Ten Concepts for Teaching PPIT:**

1. Integrate ethical decision-making and tactics of intervention in every police training course, both academy and in-service, and include tactical scenarios—similar in format to shoot/don't shoot types of training—and role-playing with peer intervention in all subjects.
2. Narrow the divide between what officers know they are supposed to do and what the reality is on the street by using real life scenarios. (“Walking with the Devil” by Mike Quinn is filled with examples.)
3. Language is key and must be developed—both effective language for teaching peer intervention techniques as well as developing language for officers to use tactically.
4. Psychological as well as physical intervention techniques must be taught. Officers clearly know how to break up a fight—they must be taught when and how to intervene when the aggressor is another police officer.
5. To succeed, peer intervention by police officers to prevent misconduct by fellow officers must be fully supported by police leadership. Police chiefs, deputy chiefs, and supervisors at all levels exert tremendous influence and must clearly and consistently demand high ethical standards and conduct of officers under their command. Officers must be taught to recognize when reporting misconduct is mandatory, and if the officer fails, he/she is also guilty of misconduct and subject to discipline or criminal prosecution.
6. Lectures on ethics are not enough; officers must engage in role playing, which can have an enormous impact in self-awareness by putting officers outside of their comfort zone.
7. Training in “bystandership” itself can help to promote active intervention by helping individuals overcome the feeling of personal helplessness through learning the lessons of history. Curriculum includes: the Milgram study, “Ordinary Men” by Christopher Browning, lessons of the Holocaust, the Underground Railroad, My Lai, and Iraq (Abu Ghraib).
8. It is important to teach group dynamics and the role of the individual within the group. Officers must be aware of the strengths and value of group cohesiveness, but learning to evaluate

is essential for “critical loyalty”—to develop the ability to oppose group policies and practices that are destructive.

9. Peer intervention training has to involve not only officers, but their families and those outside the department who are significant in their lives. Officers need to be reminded about the consequences to their families and loved ones of failing to intervene to prevent wrongdoing by fellow officers.

10. Training must be tailored to integrate officers into their community. In order to begin to penetrate and overcome the deep distrust that unfortunately exists between many U.S. communities and their police departments, it is essential that training and discussions about ethical decision making and peer intervention also includes members of the community so police officers are not just talking to one another. It is important that officers fully understand the isolation and distrust that maintaining the police code of silence creates and how it does not enhance, but undermines their ability to safely and effectively perform their duties.

### **III. Recommendations for the Task Force on 21<sup>st</sup> Century Policing**

1. Develop police training that teaches officers constitutional policing to balance the demands of policing in times of gun violence and terrorism. Respect and community values must stressed during this period of increased militarization of policing.
2. That “Independent Oversight” be considered as a cornerstone in bridging the gap between police departments/officers and the communities they serve. Oversight enhances constitutional policing and provides transparency and legitimacy when relationships between law enforcement and the community have been damaged. In jurisdictions in which the Department of Justice is negotiating consent decrees, the establishment of effective oversight should be included.
3. That police ethics be taught through Police Peer Intervention Training (PPIT), a powerful and compelling training that teaches officers “critical loyalty”, to intervene to stop their partners before they use excessive force or take action that could put their lives and careers in jeopardy. PPIT connects officers with the communities they serve and empowers them to perform their duties in a respectful and lawful manner. In jurisdictions in which the Department of Justice is negotiating consent decrees, Police Peer Intervention Training should be mandated.

Submitted by:



Barbara Attard  
NACOLE Past-President  
Consultant, Accountability Associates<sup>2</sup>

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<sup>2</sup> Barbara Attard is an oversight practitioner and consultant with 30 years experience, having worked in three oversight agencies in the San Francisco Bay Area.

# **MILLIONHOODIES**

## **MOVEMENT FOR JUSTICE**

### **Statement by the Million Hoodies Movement for Justice Before the President's Task Force on 21<sup>st</sup> Century Policing**

Dante Barry, Executive Director

January 28, 2015

Million Hoodies is a national racial justice organization founded to protect and empower young people of color from mass criminalization and gun violence. In 2012, our organization created a tool to help track and document incidents of police misconduct and institutional discrimination and has since collected over 2,000 incidents of misconduct in New York City alone.

In 2010, a SWAT officer shot Aiyana Stanley-Jones, 7, to death during a late night raid in Detroit after a grenade lit her blanket on fire. A SWAT team raided the mayor of a small town in Prince George's County, Maryland in 2008 after he and his wife were held at gunpoint for drug allegations. Militarized police in the U.S. are trampling over our civil rights and turning Black and Brown communities into war zones.

The militarization of police in the U.S. would not be possible without programs from the Defense Department and Department of Homeland Security, providing federal surplus of military equipment to local and college campus police departments. An ACLU report found no outside oversight or reporting on the use of SWAT tactics and police militarization while over 120 campus police forces have received military equipment from the Pentagon through the National Defense Authorization Act. When students at the University of California, Riverside, a Million Hoodies chapter, publicly demanded the scaling back of university privatization, police met them with batons and paintball pellets. In 2011, campus police used CS gas, pepper pellets, and beanbag rounds on Occupy protestors at UC-Davis. Inspired by this growing movement, Million Hoodies believes that the political and cultural stage is set to push for more effective and inclusive policing practices.

#### **Recommendations:**

With the emergence of new technologies like the "use of force simulators"<sup>1</sup> it is important to be aware of some of the opportunities and potential pitfalls of relying solely upon technology to change police behavior. No one approach can

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<sup>1</sup> <http://www.titraining.com/>

impact the issues we are currently facing with regards to police-community interactions. Therefore, it is very important that we take a holistic approach to the issue of excessive force when dealing with police training and protocol. In order to effectively address issues of police misconduct we must acknowledge the multiple factors that contribute to this phenomenon and try to comprehensively address each.

### **Education is a two-way street<sup>2</sup>**

In dealing with cases of excessive force and police misconduct we must first and foremost educate the citizenry about what is expected of them. Citizens, especially the youth, should have the opportunity to **learn about their rights in an easily accessible format**. Preparing the youth to properly engage with law enforcement at an early age increases the likelihood that they will **avoid unnecessary confrontations with police officers**. Furthermore, preparing the youth how to engage with officers in a school setting **allows for dialogue to take place among peers and between experts or professionals**.<sup>3</sup> Cultivating this type of education among the citizenry can have positive impacts for future generations by teaching people how to properly interact with law enforcement. Unfortunately, many of the excessive force/violation of personal rights incidents occur because citizens are viewed as **potential threats**. If we can be proactive in educating citizens how to properly engage and communicate with law enforcement officials, we may have a better chance of reducing the amount of deaths of unarmed citizens.

#### *Formal Education*

Police officers could be required to take preliminary or refresher courses on subjects such as conflict negotiation and mediation. Since officers are often placed in very challenging and complex situations it is important that they are able to **effectively communicate to citizens under duress**. This formal education should also focus on the psychological effects of historic police-community interactions. For instance, in locations where there has been a history of police misconduct, racial tensions or excessive force there should be some accompanying **education about the historical relationship between law enforcement and residents in that neighborhood, precinct or city**. Having police officers be aware of the historical trauma of a community can help better contextualize officers' work in certain communities. This type of training is especially important when police departments patrolling communities of color are not representative of the racial composition of the neighborhood. If officers remain unaware or neglectful of this history they are putting themselves and the community at a major disadvantage. Understanding the history and significance of places and incidents that took place in the neighborhood in previous years is especially important in low-income communities where there

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<sup>2</sup> <http://strategiesforyouth.org/>

<sup>3</sup> ACLU

may be generations of residents living in the same neighborhood. If officers new to the area remain unaware of this history, while long-time residents carry this baggage and pass this knowledge onto new generations there will undoubtedly be a discrepancy between the expectations and actions on both sides. Whether warranted or not, there are many communities that live in fear of the police because of their personal and/or historical traumas which can lead to prejudices and biases towards the police. Therefore, one step that should be taken is to formally educate police about these incidents and provide trainings that will help officers respond to these residents in a culturally relevant manner. Providing diversity training for police officers that include **community charrettes** with residents in the local community can offer some insights into these complex police-community dynamics at play. It is important that both sides of the story be heard and that residents and police recognize that only by working together and being respectful of one another will relations improve. Diversity training should deal with the cultural, social and psychological impacts of crime and heavy policing in low-income communities and communities of color. **Helping police understand how to deescalate situations in a ways that do not require excessive force** is extremely important in advancing these relationships in a positive direction. If police continue to respond to incidents with excessive force it will only further alienate the community and diminish the likelihood that police-community relations will ever improve. Therefore,

### **Tasks and Action Items**

- Create working groups within community organizations and at schools that allow for best practices to be shared among students.
- Provide teens with the space to share stories of personal experiences and trauma with police. This can help deal with stress and biases from traumatic incidents and hopefully dispel some prejudices that *all* police officers act in this way.
- These group meetings (whether held by the school or a community organization) can invite officers into a safe space where students, teachers and mediators can share stories and best practices.
- If there is buy-in from police officers there may be an opportunity to present what they view as misconduct, threatening or disrespectful. These types of interactions could hopefully help cultivate a better understanding from both parties' perspectives and create dialogue that can improve the local community.
- If students are allowed to share their stories of personal harassment with law enforcement officials present it may help educate officers about they are viewed within the community. This could potentially help bridge the gap between the two parties and offer some potential solutions for future encounters for both

parties.

### **Data Acquisition and Usage**

In the era of big data there is great potential to implement monitoring/tracking software that reveal to use the opportunities and potential liabilities for policing. By monitoring incidents such as the killings of unarmed citizens we can learn a great deal about the type of policing that is taking place in certain neighborhoods. Although this information may be sensitive it could be very valuable to put together an application that does something similar to the LA Times Homicide Report.<sup>4</sup> This report documents all of the killings within LA County and breaks it down by year, gender, race, etc.. If police departments across the nation were **required to report the killings of unarmed victims by their officers** it could help put this epidemic into perspective. If basic data is required to be provided such as race, gender, age and location of death this could help us decipher some key trends about these types of killings. It is important to note that this data may not do justice to every single case because there are often extenuating circumstances in these instances. However, gathering this basic information (excluding name and other sensitive information) could help determine if there are precincts or cities that are experiencing a higher cluster or rate of these types of incidents. Gathering this data and making it publicly available would not only increase transparency but could help identify potential problem areas within police departments and cities.

With the recent turn toward “use of force” simulators in police academies there is a great opportunity for police officers to undergo periodic trainings. If officers were required to **participate in periodic trainings they could be easily monitored on their progress** or lack thereof, which could provide essential information to help keep ill-prepared officers off the street. For instance, if a use of force simulation training was require four times of the course of one year it would be relatively easy to document and track an officer’s progress. If an officer fails 50% of these trainings over the course of two years it is very likely that the officer in question may need to be retrained. This type of periodic assessment could help keep officers who are ill-prepared off the streets and ensure that all patrolling officers are up to date with the most recent training and techniques taught in the use of force simulations. These assessments could greatly reduce the risk of officers being caught of guard and can constantly prepare them for unfavorable situations.

Data should also be used to monitor police misconduct and potential liabilities within police departments. For instance, if a police officer has multiple cases or complaints against him regarding the use of excessive force it is of the utmost importance that this be monitored by superiors. Unfortunately, because of improper data handling there are some officers who remain in positions of power

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<sup>4</sup> <http://homicide.latimes.com/>

despite their repeated offenses.<sup>5</sup> It could be required that any incidents of police misconduct or excessive force be monitored by each police precinct. If one officer surpasses a certain number of complaints or has open cases against him/her in litigation it is important that all superiors be made aware. Collecting and organizing this data in a way that is accessible to superiors and organizations like the DOJ can help monitor these officers and ensure that they do not continue to increase in their number of reported incidents. For instance, if an officer surpasses a certain number of incidents it could be mandated that he/she take a necessary leave of absence or be reassigned to a different task until he/she undergoes mandatory retraining.

### **Tasks and Action Items**

- Require data to be collected on incidents of killings of unarmed victims. This data should have some basic data fields such as race, gender and age to determine if certain populations are experiencing these incidents at a higher rate than others.
- This type of data could be used as tool for monitoring police killings and finding trends or clusters of activity that could reveal more information about the affected population or the precinct or city serving the affected population.
- Require periodic trainings and use of force simulations to maintain a high level preparedness among officers. Use of force simulators allow for officers to determine how to react in certain situations and can provide period assessments of the tactics and techniques being used. This can ensure that both rookie cops and long-time officers have the adequate skill levels (response times, proper protocol, and cognitive development, v) to react to the situations presented in the simulator.
- Use data analytics to track if officers have pending or current excessive forces cases against them. Data should be used to monitor these incidents because it is an easy way to identify potential problem areas within a police department.
- By monitoring and tracking a police officer's record precinct's can take a more proactive approach in addressing issues of misconduct. Since some of these excessive force cases result in the department paying thousands of dollars in litigation and settlements fees it would be very beneficial for precincts be required to monitor an officer's history. Gathering evidence on an officer's history in one database could allow for a monitoring system that allows

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<sup>5</sup> <http://www.opposingviews.com/i/society/crime/infamously-abusive-cop-sterling-wheaten-ordered-pay-victim-250000>  
<http://reason.com/blog/2013/11/22/15-internal-affairs-investigations-in-tw>

precinct's to have substantial evidence to reassign, retrain or dismiss an officer engaging in constant misconduct.

**Source: Michael Berkow**

**Chief of Police, Savannah, GA**

I wanted to share a few thoughts about policing and specifically about police officer use of deadly force. I believe that I have if not a unique perspective, a particularly valid one on this topic because:

1. I have investigated hundreds of officer involved shootings.
2. I developed the concept, put into operation and then managed the Force Investigation Division for the LAPD that got us out of the consent decree. This was a complete re-working of the process of investigating officer use of deadly force and has become the model in the US.
3. Sadly, I had to prosecute an officer of mine from Savannah Metro Police for murder arising out of an on-duty shooting in 2007 that resulted in his conviction for manslaughter. In short, I have personally been involved in that very, very small number of cases where an officer has clearly gone beyond the use of force authorized by law and moved from a mistake or bad judgment into the realm of criminal conduct.
4. We created a unique training class called "Managing Officer Created Jeopardy" in Savannah. This class was a direct outgrowth of my first year as chief during which I had 8 officer involved shootings. After the course was started and run, we had no officer shootings for the next 24 months.

My key point is that we KNOW how to manage police use of force and we absolutely KNOW how to properly investigate this very limited number of situations. The fact that we don't, that we neither train properly nor investigate properly is a result of a lot of factors.

I want to share with you a couple of key points and some suggestions if I may.

1. It is critically important that the police investigation team understands the interplay between administrative investigations and criminal investigations and then operationalizes that reality in their investigative protocol. Put simply, every OIS investigation actually has to accomplish three different investigative purposes.
  - a. A criminal investigation that will allow for the suspect whose actions precipitated the shooting (assuming that the suspect is alive). Officers generally use force in response to some assaultive behavior; after the incident is controlled, there needs to be a criminal prosecution of that suspect. If the shooting officer is the only witness, this can be tricky.
  - b. A criminal investigation of the officer who used deadly force. This is a very narrow investigation and goes only to the question of whether the officer has followed the law that authorized him/her to use deadly physical force (generally in defense of self or a third party). This investigation is not about tactics, training, or weapons—it is very specific and very limited in scope.
  - c. An administrative investigation. This is the broadest investigation of the matter. This should cover all tactics, tools, and actions of the officer. This is the place where an officer can be held accountable—administratively—for a shooting that in the vernacular of the street is "lawful but awful."

These three investigations must be planned for and managed. The most critical point is the interview of the subject—the shooting—officer. Frequently the officer will not voluntarily answer questions in a criminal interview (b above). That is a constitutional right that must be respected and the reality is that with the current national discussion regarding police use of force, it is more and more common for officers to refuse to answer questions unless compelled via a Garrity warning. For example, in Los Angeles, NO officer at the scene of an officer involved shooting (shooting officer or witness officer) will answer questions voluntarily during the criminal investigation; they demand to be compelled via Garrity process before they will discuss the shooting. This puts a heavy burden on the investigating team to be very clear about roles and responsibilities at these incidents. Which brings me to my second critical point

2. The subject (shooting) officer must be interviewed contemporaneously to the shooting. This is not something that can be put off several days but rather is something that must be done as close in time to the event as possible.

The reason for this is clear: If the officer is allowed to interact with others, other officers, union representatives; watch news reports, etc., the statement is going to be contaminated. I am well aware of the assertion that officers need time to rest and recover; that their memory is better after several days. In my opinion there is a strong lack of clear scientific evidence to support that position and moreover it goes contrary to all of our police practices in every other crime. If we are investigating a homicide, we immediately interview all available witnesses. It would be unthinkable to have a key witness to a crime and suggest that the witness be allowed to go home, unsupervised, allowed to discuss the event at their leisure, watch news reports of the event and then some days later take their official statement of the event.

I believe that the policy that the LAPD follows is exactly right: they take a statement from the involved officer before they are relieved of duty after a shooting. If there the shooting occurred at the end of a long shift, we did on occasion make arrangements for the officer to sleep in a monitored situation and then after resting provide a statement before going home.

It is important to note that the statement need not be comprehensive; it need not cover every single aspect of the incident (although that is wonderful if and when it is done). Rather, it is clear to get a clear version of the officer's version of events and his justification. Will there be another interview of the officer? It depends on whether one is needed but that second interview, if necessary, can be done several days later, after a 'recovery time' and after the officer is provided a copy of his original statement.

Fairness is critical here. There can be mistakes in the officer's first statement. He/she may get the number of shots fired wrong or exact timing of events. That is human nature and must be treated as normal reactions to high stress events. Our expectation should not be a perfect witness arising from that first interview, but we can reasonably expect that an officer can tell the story of the event and provide their justification for the use of deadly force.

3. Officer separation. We always separate witnesses at crime scenes. We never interview one witness within hearing of another. Yet, this is not an automatic practice at an officer involved shooting. The fact is that this is an element of virtually every federal consent decree imposed on a state/local department simply because it is not part of the ordinary practice in US policing.
4. Officer walk-through of the scene. This is an essential aspect of understanding the case, understanding what has happened, and putting the witness statements, the involved officer's statement, and the physical evidence together to get a coherent picture of what has occurred.

There are many critical tactical things that can and should be done here that frankly are too lengthy to describe here.

5. All witnesses and all possible witnesses must be interviewed, their interviews must be recorded, and all of that material should be transcribed and provided to the board that reviews the use of force and determines whether the event was "in policy" or "out of policy." There have been repeated incidents where "heard only witnesses" (witnesses that did not see the incident but heard some portion of it) were not properly recorded and there have been many situations where a person has told an investigator the night of the event that they did not see/hear anything only to change their story later. That first night effort and that recording goes a long way towards providing the best evidence of the incident. In particular high profile use of force event in LA, the investigating team did a total of five neighborhood canvas's including a final one where the team was a joint FBI/LAPD team and the person knocking on the door and asking for the interview as the agent.
6. There must be a reviewing process that examines the entire incident, the entire transaction, not simply the moment when deadly physical force is used. An actual example: an officer makes a traffic stop. He approaches the driver on foot and asks the driver to turn off the vehicle which the driver refuses to do. The officer reaches into the car to turn off the motor, the driver grabs the officer's arm and while holding him drives forward towards a telephone pool intending to strike the officer off of the car. While in this position, the officer draws his pistol and shoots and kills the driver. Justifiable use of force? Yes; at the moment he used his firearm he was legitimately in fear for his life. But should the department have serious concerns about the tactics that were employed that resulted in the need to use deadly force? The answer is clearly yes. In other words, the reviewing process must be comprehensive enough to examine the whole incident and strive both for improvement and, where appropriate, to hold officers accountable for actions that are improper or ill advised but not illegal.

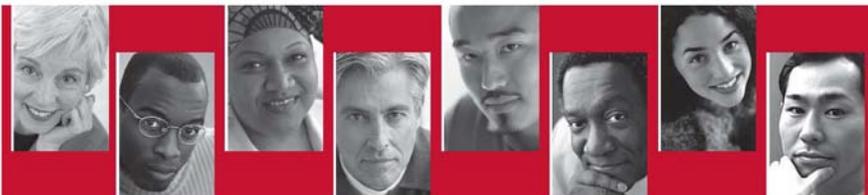
I am trying to put in a few short paragraphs things that typically cover a multi-day course. My key point again is that we do know what works and we know how to deliver it. I think it is worth stressing that I am unaware of any federal agency that follows these key rules in how they investigate their agents/officers use of deadly force! This is shocking in that the federal government via the Special Litigation unit of the Civil Rights Division is constantly suing local departments to impose these requirements on state and local officers while not demanding the same of their own personnel who use deadly force in the line of duty.

I would be more than happy to provide more details, to give you copies of the course on managing officer created jeopardy, or any of the materials that I have developed to teach police departments how to properly manage use of force incidents.

Thank you very much for taking the time to consider my thoughts.

All the best,

Michael Berkow,  
Chief of Police, Savannah PD



January 14, 2015

Dear Committee,

On behalf of NCBI International, I would like to confirm our support for Dr Wilson's research on urban violence and race and offer our co-operation and collaboration during the course of the project across our international network. At a time of enormous pressure on our sector, this research is welcome.

As CEO, I would regularly meet and communicate with Helen to discuss research needs, as would other co-ordinators. In addition to the research, we would welcome Helen at training events and our AGMs.

We have worked with Helen before and she has committed to working with us and keeping us informed as the research progresses. Helen has also promised to disseminate key findings and research outcomes to NCBI so as to aid our activities internationally. We look forward to working with her on this project.

Yours Sincerely

*Cherie R. Brown*

*NCBI creates communities in which everyone wants to belong!*



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January 28<sup>th</sup>, 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](mailto:PolicingTaskForce@usdoj.gov)

### **Policy and Oversight Listening Session Comment**

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

This comment is submitted on behalf of the Center for Popular Democracy (CPD). The Center for Popular Democracy is a national organization that works to create equity, opportunity and a dynamic democracy in partnership with high-impact base-building organizations, organizing alliances, and progressive unions. CPD provides organizational, capacity and policy support for our partners across the country. We have deep partnerships with strong, effective racial justice, economic justice and immigrants' rights organizations, in close to thirty states, such as Make the Road New York, Communities United for Police Reform, Neighborhoods Organizing for Change in Minneapolis and others.

Most of our partner organizations are based in low-income communities of color. Because of the prevalence of police discrimination and mass criminalization in these communities we have been working on issues of criminalization and police accountability since our inception in 2012. CPD has been part of the campaign for police accountability in New York City, through our partner Communities United for Police Reform, Make the Road NY, and New York Communities for Change. We also have been working with the Organization for Black

Struggle and Missourians Organizing for Reform and Empowerment (MORE) in Ferguson to support their efforts to enact meaningful reform in the St. Louis area.

Based on our work across the country, and through collaborations with other national and local organizations, we have developed a series of best practices as well as federal and local recommendations. We believe if enacted these recommendations would not only increase transparency and accountability for local law enforcement but would also make communities safer. We write to share these recommendations with the Task Force.

The killing of Eric Garner, Mike Brown, John Crawford III and Ezell Ford in the span of four weeks this summer and the subsequent failure to hold any officers involved in those killings responsible resulted in nationwide protest and resistance. Community members in over two hundred cities across the country planned die-ins, walk-outs, acts of civil disobedience and protests demanding recognition, not only in rhetoric but in deed, that their lives matter. These killings, the vilification of the victims and the impunity reserved for the perpetrators, are not exceptional. They are reflective of an epidemic of state-sanctioned terror perpetuated against many black and brown communities through police violence and occupation, economic deprivation, incarceration, surveillance, and political isolation. According to woefully incomplete data by the Federal Bureau of Investigations a black person is killed on average of twice a week by law enforcement in this country.<sup>i</sup> This surpasses the estimated rates of lynching in the early decades of the 20th century.<sup>ii</sup>

The prevalence of state violence and the absence of accountability are indicative of the systematic devaluing and dehumanization of black and brown lives and the communities that cultivate them. In communities across the country the lack of transparency, accountability, and community input along with the surge of federal funds and federally supplied military equipment have created police cultures of impunity, violence and abuse. In many communities the police are seen as an occupying force and children as young as twelve are so demonized and dehumanized by the weight of racism and racial profiling, that they are viewed as targets to be shot on sight.<sup>iii</sup>

The recent spotlight on police violence and the resulting national unrest has made clear that it is time to re-think both the practices and purpose of policing. Communities must be part of a collaborative process to determine what makes them safe. In our experience, the “broken windows” or “zero tolerance” philosophies of policing, which encourage officers to aggressively enforce low level and often non-criminal offenses, creates an atmosphere of fear and mistrust between communities and law enforcement. It also feeds systems of economic exploitation, where municipalities fund themselves by further exploiting the most vulnerable and depressed communities through targeted policing.<sup>iv</sup> We believe that the outcries of countless communities, who have lived too long under the weight of mass incarceration and discriminatory policing, deserve more than cosmetic changes to policing practices. It is time for a fundamental shift in power that places the concerns and solutions of communities most affected by flawed policing practices at the center of policy-making. In addition to the recommendations below we believe key to such a shift is a divestment from militarized and punitive policing and an investment in communities, who desperately need more jobs, better schools and access to adequate housing, transportation and healthcare.

We submit to the Task Force both local and national recommendations. We recognize that policing is largely a local issue—in so far as many of the laws and regulations which control policing are implemented and monitored at the local level. However, throughout our history there have come times when local authorities' dismal and systemic failures to protect the life, rights and dignity of their residents created a moral and constitutional imperative for federal action. We saw this in the years after the Civil War and throughout the Civil Rights Movement of the 1960s. The systemic and unchecked brutality visited upon many black and brown communities by those deputized to protect and serve as well as the glaring hypocrisies of a system, which daily condemns countless black and brown people to prison for minor offenses and yet refuses to indict and allow for a public airing of facts when a police officer summarily executes unarmed black men, has created such a moment. The scope and severity of these issues require action by the federal government.

**National Recommendations:**

- **A comprehensive review by the Department of Justice into systematic abuses by police departments and the development of specific use of force standards and accompanying recommendations** for police training, community involvement and oversight strategies and standards for independent investigatory/disciplinary mechanisms for excessive use of force. These standards should include a Department of Justice review trigger when continued excessive use of force occurs.
- **Strict limits on the transfer and use of military equipment to local law enforcement.** The federal government should discontinue the supply of military weaponry and equipment to local law enforcement and immediately demilitarize local law enforcement, including eliminating the use of military technology and equipment.
- **A comprehensive federal review and annual reporting of discriminatory policing.** This should include a federal review of police departments' data collection practices and the development of a new comprehensive data collection system that allows for annual reporting of discriminatory policing data, including data on the rates of stops, frisks, searches, summonses, arrests and use of force by race, age, gender and reports of complaints against officers and disciplinary actions taken or not (number, level, how many officers). These standards should include a DOJ review trigger when continued discrimination occurs.
- **The development of a DOJ policy to withhold funds from local police departments engaged in discriminatory policing practices and conditioning of federal grant funds** to local police departments on the adoption of recommended DOJ trainings, community involvement and oversight strategies, use of force standards and standards for independent investigatory/disciplinary mechanisms.

- **The development and enactment of a National Plan of Action for Racial Justice by the Obama Administration.** The National Plan of Action for Racial Justice should be a comprehensive plan that address persistent and ongoing forms of racial discrimination and disparities that exist in nearly every sphere of life including: criminal justice, employment, housing, education, health, land/property, voting, poverty and immigration. The Plan would set concrete targets for achieving racial equality and reducing racial disparities and create new tools for holding government accountable to meeting targets.
- **Repurposing of Department of Justice (including COPS) funds to create grants that support and implement community oversight mechanisms and community based alternatives** to punitive law enforcement and incarceration—including community boards/commissions, restorative justice practices, amnesty programs to clear open warrants, and know-your-rights-education conducted by community members.
- **Requirement that all juvenile and criminal justice related legislation be accompanied by a racial/ethnic/gender/age impact statement** detailing any projected disproportionate impact on communities of color.

**Local Policy Recommendations:**

- **Enforceable bans against profiling** based on race, religion, national origin, housing status, sexual orientation, gender and gender identity/expression, immigration status, disability status, age, language and occupation.
- **The collection and publication of data** on the rates of stops, frisks, searches, summonses, arrests and use of force aggregated by race/age/gender of officer(s) and individual, as well as annual report of complaints against officers for misconduct and use of force and disciplinary actions taken.
- **The end of ‘War on Drugs’ tactics and practices**, which result in disproportionate contact between police and communities of color. This includes the decriminalization of marijuana and a de-prioritizing by local law enforcement of drug possession (in the choice to summons, arrest and prosecute).
- **The adoption of policies that mandate meaningful and binding community input** in determining the purpose, priorities and practices of local law enforcement. This may include empowered civilian complaint review boards, community advisory boards, community budgeting bodies and/or civilian commissions.

- **The development of amnesty programs** to clear low level criminal offense and traffic warrants.
- **The elimination of “broken windows”, “zero-tolerance” and other policing policies and practices**, which encourage discriminatory targeting and overly aggressive police encounters for minor offenses.
- **The limiting of police in schools**, outside of clearly defined emergency situations, and an end to school-based arrests for any misdemeanors or for any offenses which would be legal if they were adults.
- **The transfer of disciplinary authority from police departments to another entity**, which has clear and enforceable community input, decision-making mechanisms, and investigatory (including subpoena) power for any incident of alleged misconduct against community members.
- **Changes to internal departmental policies which measure officer’s performance** by the number of stops, summonses or arrests and the adoption of community based and civil rights friendly evaluation metrics.
- **Availability of federal and state grants to investment in communities most devastated by poverty and police abuse** in order to support job programs, affordable and non-exclusionary housing, community schools, restorative justice programs and community education programs.

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<sup>i</sup> There is currently no accurate or comprehensive data documenting the number of police related deaths. This is because current statistics are self-reported and are not verified. Additionally, there is no enforcement mechanisms to ensure that the limited national mandates in place are followed (see The Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141). See The Federal Bureau of Investigation Uniform Crime Reports. Available: [http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/offenses-known-to-law-enforcement/expanded-homicide/expanded homicide data table 14 justifiable homicide by weapon law enforcement 2008-2012.xls](http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/offenses-known-to-law-enforcement/expanded-homicide/expanded-homicide-data-table-14-justifiable-homicide-by-weapon-law-enforcement-2008-2012.xls)

<sup>ii</sup> Isabel Wilkerson, "Mike Brown's shooting and Jim Crow lynchings have too much in common." *The Guardian*. August 25, 2014. Available: <http://www.theguardian.com/commentisfree/2014/aug/25/mike-brown-shooting-jim-crow-lynchings-in-common>

<sup>iii</sup> Twelve year old Tamir Rice was killed by police within seconds of the police arriving at the Cleveland park where he was playing.

<sup>iv</sup> The funding of municipalities through summonses, fines and traffic tickets—disproportionately extracted from poor black and brown communities—is a disturbing phenomenon throughout the country. The dependence of municipalities on this source of revenue varies. In places like Ferguson, where there is not a steady source of municipal revenue, these funds sometimes make up over 30% of the cities funding. The practice amounts to a regressive tax, which uses the threat of incarceration and state violence. See Radley Balko, "How municipalities in St. Louis County, Mo., profit from poverty." September 3, 2014. The Washington Post. Available <http://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty/>; Jonathan Blanks, "The NYPD's work stoppage is costing the city lots of money." January 7, 2014. Available: <http://www.washingtonpost.com/posteverything/wp/2015/01/07/the-nypds-work-stoppage-is-costing-the-city-lots-of-money-thats-great-for-new-yorkers/>



## **CROSS – CULTURAL POLICING IN THE 21<sup>ST</sup> CENTURY**

*Testimony submitted in support of to the President's Task Force on 21<sup>st</sup> Century Policing, Listening Session on Building Trust and Legitimacy held on January 13, 2015 in Washington, DC.*

*Delivered: Thursday, January 15, 2015*

The Hispanic American Police Command Officers Association (HAPCOA) has for more than 40 years focused on law enforcement leadership issues, training, mentoring, promotions and concerns as they relate to our Hispanic communities nationwide.

With respect to the President's Task Force on 21<sup>st</sup> Century Policing, the changing nationwide demographics, which include the emerging Hispanic population, must be addressed and recognized, as the issues will forever change policing in the 21<sup>st</sup> Century.

US cities with growing dominate Hispanic populations will bring to bear issues associated with young and adolescent populations. The issues will include: educational services drop out rates, truancy, employment opportunities, immigration requirements and language barriers.

Diversity in law enforcement will be a more visible and significant issue to be addressed by city, county, state and federal officials. The call will be for diverse police forces as a requirement to instill confidence within Hispanic communities. Today the number of communities with emerging Hispanic populations is growing at an exponential rate in areas of the country that are not found in states that historically have large Hispanic populations, such as California, Texas, Florida and New York. Many of the new Hispanic communities are devoid of diverse police forces reflective of the neighborhoods that they serve and protect.

Active participation from community leaders, elected officials, and senior executives in law enforcement will be required for solutions. These changes will begin with outreach to students – elementary aged children - as a way of creating a renewed positive image of law enforcement. Additionally, the creation of recruitment teams supported by members of the community, elected officials and Hispanic law

enforcement officials (of all ranks). Support for this effort can be provided by organizations that have an established relationship with the Hispanic community – like HAPCOA. A COPS grant in support of this effort would have positive results.

The active recruitment of additional Hispanics officers is only a beginning. The departments must accept diversity in law enforcement as part of their strategic plans, with measurable and obtainable goals all in support of improved community relations, community outreach and effective policing. Supporting all officers with specialized training that is sensitive to diversity and improved community liaison will be successful with mentoring and reinforcement. A focus on “Cross-Cultural Police” training, embraced by police officers, will improve communications with the public. This in return, improves the officers’ abilities to serve and protect without compromising their safety or the safety of the community.

Additional benefits will be obtained by providing by supporting officers with Spanish language training and by briefing officers on evolving social issues that will affect their abilities to provide law enforcement services.

Criminal Justice related perceptions and issues might also affect policing in the 21<sup>st</sup> Century. Officers may find themselves responding to concerns, that while they are not directly related to policing issues, will need to be addressed by law enforcement to control rioting, crowd control, looting, peaceful demonstrations, etc.

HAPCOA also finds that the recruitment, training, mentoring and promotion of Hispanic American Police Command Officers will become a significant requirement in the 21<sup>st</sup> Century, if policing is to be successful in addressing the issues facing the Hispanic communities.

Executive Director Anthony Chapa delivered the following statement, in response to the issues surrounding the situation in Ferguson, MO, during the HAPCOA 41<sup>st</sup> Annual National Law Enforcement Training Symposium in San Antonio, TX on December 2, 2014:

*The events which transpired in Ferguson and cities throughout the United States are indicators of the deep seated resentment among community members who believe their concerns are not being viewed as valid, worthy of attention, or consideration.*

*Law enforcement officers, imbedded as public servants, are entrusted to “maintain the peace” while fostering a safe environment where businesses and neighborhoods thrive. Special attention must be given to understanding the cultural composition of individual communities. Embracing differences and cultivating sameness encourages dialogue with members and may open avenues for change.*

*More than ever, it is crucial to pursue solutions to the issues that are created when members of law enforcement and representatives of our criminal justice system are not reflective of the diverse populations they serve.*

*Quick fixes cannot be attained by destroying property, looting stores, disrupting the peace, or endangering the well being of our fellow neighbors and police officers. The underlying issues and sentiments that give rise to these actions cannot be ignored.*

*It is important to encourage and protect the right to protest peacefully; however, it is equally important to foster open dialogue with community and public leaders about meaningful systemic changes.*

*The time to forge a path is now. Together, we must implement remedies that address the social ills we face while safeguarding the liberties, rights, health, and stability of our communities at large. Establishing police agencies that resemble the communities they serve and protect, from leadership to street officers, is an integral step in the solution processes.*

*A diverse community can be strong, inclusive, and united. "Power in Unity for the Common Good" is HAPCOA's motto and is strongly supported by its members.*

Thank you,

*Anthony Chapa*

Anthony Chapa  
Executive Director  
Hispanic American Police Command Officers Association  
PO Box 29626  
Washington, DC 20017



# HAPCOA

HISPANIC AMERICAN POLICE COMMAND OFFICERS ASSOCIATION

## 2015 National Board

**Anthony Chapa**  
**Assistant Director (Ret.)**  
United States Secret Service  
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United States Secret Service  
Uniformed Division  
*Director at Large*

January 15, 2015

Mr. Ronald Davis  
Executive Director  
President's Task Force on 21<sup>st</sup> Century Policing  
Community Oriented Policing  
United States Department of Justice  
145 N Street, NE  
11<sup>th</sup> Floor  
Washington, DC 20530

Dear Mr Davis:

The Hispanic American Police Command Officers Association (HAPCOA) wishes to support the President's Task Force on 21<sup>st</sup> Century Policing by providing the attached remarks to be included within the public comment period for your consideration and review. The forwarded remarks are in response to the Listening Session of Building Trust and Legitimacy held on January 13, 2015 in Washington, DC.

HAPCOA, established in 1973, is the oldest and largest association in the United States of Hispanic American Command Officers from law enforcement and criminal justice agencies at the municipal, county, state and federal agencies.

Through HAPCOA, chiefs of police, sheriffs and police command staffs from around the country are committed to meeting the challenges that 21<sup>st</sup> Century Policing will require to include the challenges of selection, promotion and retention of Hispanic men and women in professional law enforcement and the criminal justice system.

The courageous men and women of HAPCOA also work diligently to address the concerns of their respective communities and improve community relations through the implementation of innovative, state of the art training and education programs.

The attached document focuses on "Cross – Cultural Policing in the 21<sup>st</sup> Century". I hope that the President's Task Force on 21<sup>st</sup> Century Policing will appreciate that the next generation of policing will need to include a keen focus on the emerging Hispanic population and all related law enforcement issues and service requirements.

If you have any questions please feel free to reach out to HAPCOA for additional comment and support.

Sincerely,

*Anthony Chapa*

Anthony Chapa  
Executive Director



## OFFICE OF THE INDEPENDENT POLICE AUDITOR

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Judge LaDoris H. Cordell (Ret.)  
Independent Police Auditor

29 January 2015

To: The President's Task Force on 21<sup>st</sup> Century Policing

From: Judge LaDoris H. Cordell (Ret.)   
Independent Police Auditor for the City of San Jose, California

Re: Support for Civilian Oversight of Law Enforcement and the Recommendations of NACOLE

Our office is a member of NACOLE and supportive of its sensible and innovative work to promote civilian oversight of law enforcement. I am in full support of NACOLE's five recommendations to the President's Task Force, and especially want to emphasize the importance of its fifth recommendation---ensure that independent civilian oversight is a part of efforts to identify and resolve underlying systemic problems within law enforcement.

Since 2010, I have been the Independent Police Auditor (IPA) for the City of San Jose, California. Before that, I was a California State Court judge for 19 years. The responsibilities of the IPA office are three-fold: (1) to provide civilian oversight of police misconduct complaints from the public; (2) to conduct outreach throughout the City of San Jose (the 10<sup>th</sup> largest city in the U.S.), and (3) to recommend better police policies and practices to the San Jose Police Department. In 1996, the City Charter was amended by the electorate to establish the IPA office as a formal part of San Jose city government.

The police, no less than the rest of us, are mortals---composites of strength and weakness, insight and obtuseness. Therefore, it is not enough that the police be fair, they must be perceived to be fair by the public they serve, a perception that is undermined when the police are left to police themselves. The debate over who should oversee the police has existed since the beginning of American policing. From local politicians to police commissions to civilian review boards to civilian police auditors, just who is best suited to police the police has changed over the years. What is clear is that public's trust in our police officers cannot thrive without independent civilian oversight.

It is my view that every police department in this country should have some form of independent civilian oversight of investigations into allegations of police misconduct. In San Jose, although it is the Internal Affairs Unit that investigates complaints of officer misconduct, it is our office that oversees those investigations and the analyses of whether or not misconduct occurred. While there are ways in which the work of our office can be improved, it is the case that those who live

and work in San Jose understand that the police do not police themselves. And it is because of this oversight that the trust between the police and San Jose residents, especially those residents of color, has improved in San Jose.

I urge the President's Task Force to recommend that all federal policing grants be conditioned on the requirement that the recipients establish and maintain independent civilian oversight agencies.

Cc: Brian Buchner  
President, NACOLE



WRITTEN TESTIMONY OF LISA FOSTER  
DIRECTOR, ACCESS TO JUSTICE INITIATIVE  
UNITED STATES DEPARTMENT OF JUSTICE  
SUBMITTED TO THE PRESIDENT'S TASK FORCE ON 21<sup>ST</sup> CENTURY POLICING

Thank you for the opportunity to submit written testimony to the Task Force. The Access to Justice Initiative (ATJ) was created by Attorney General Eric Holder in March 2010 to address the access-to-justice crisis in both the civil and criminal justice systems. ATJ works within the Department of Justice, across federal agencies and with state, local, and tribal justice system stakeholders to increase access to legal assistance and secure fair outcomes for people regardless of wealth or status. ATJ's work in both the civil and criminal justice systems connects directly and daily with the work of the Task Force. Based on our experiences, we offer two brief recommendations to the Task Force.

1. **Law Enforcement Should Work Directly With Civil Legal Aid Offices in Their Communities.**

Repairing the relationship between law enforcement and the communities they serve will unquestionably require working with partners who are trusted by both. Civil legal aid offices should be one of those partners. Throughout the United States, legal aid offices are actively engaged in a variety of programs that improve community safety. Many collaborate with local law enforcement, particularly with respect to domestic violence; others help deter crime by keeping children in school, helping people with criminal records successfully integrate back into their communities, and assisting Veterans, the mentally ill and other vulnerable populations access the services they need.

Legal Aid of East Tennessee is typical. The office works closely with both the Knoxville Police Department and the Knox County Sheriff's Department who refer domestic violence victims to Legal Aid and then work with Legal Aid lawyers to secure evidence to obtain protection orders. In Lexington, North Carolina, Legal Aid partners with the Lexington Police Department in a COPS-funded innovative strategy known as the Offender Focused Domestic Violence Initiative. Around the country, dozens of legal aid programs provide wraparound services that help victims, including victims of elder abuse, obtain protective orders, housing and child support.

Legal aid also helps deter crime by keeping kids in school. They provide services to parents and children ranging from obtaining special education for children with disabilities to providing advice and representation of children in school disciplinary hearings to helping foster and homeless youth stay in their school of origin when their living situations change. For example, youth referred to TeamChild legal aid lawyers in Cincinnati by probation officers had

the following outcomes over a 9-year period: 95% had no adjudicated felony charges; 83% had no adjudicated misdemeanor charges; and 50% of youth who participated for at least one year were promoted to the next grade. Legal aid works with other vulnerable populations who, without representation, may become victims or perpetrators of crime including people with mental disabilities and the homeless, including homeless Veterans.

Finally, many legal aid programs support successful reentry. Federal agencies, including the Departments of Labor, Health and Human Services, and Justice, fund reentry efforts in communities, and many legal aid offices provide critical services that help people with criminal records overcome many of the barriers to securing a job, obtaining housing, or continuing their education.

Because legal aid offices are trusted community partners, law enforcement should look for ways to work collaboratively and creatively with their local legal aid offices. If a police officer proactively refers a domestic violence victim to legal aid for a possible restraining order, suggests to a parent of a truant teenager that a legal aid lawyer might help secure the special services their child needs to stay in school, or encourages a mentally ill homeless Veteran to contact their local legal aid office for help getting benefits, they will keep their communities safer and demonstrate to their communities that they care. Legal aid offices may also serve concretely as neutral sites for convening community meetings, and legal aid lawyers and staff can help facilitate constructive conversations between law enforcement and the communities they serve.

## **2. Public Defenders Must Be Involved in Designing and Implementing Solutions.**

Missing from the conversation about restoring trust between communities and law enforcement is the voice of public defenders. The men and women who defend those apprehended by law enforcement know their communities and the injustices of our criminal justice system well and have important ideas to contribute. More importantly, if we exclude criminal defense attorneys from the discussion about how to create an effective partnership between law enforcement and local communities that reduces crime and increases trust, we are likely to view the issue too narrowly. The problems that gave rise to the tragedies in Ferguson and Staten Island – and the outrage they provoked – go beyond the actions of law enforcement and extend more broadly to the entire criminal justice system.

As Jonathan Rapping, the President and Founder of Gideon's Promise and the recipient of a MacArthur Foundation "genius" award, recently wrote:

Had Michael Brown or Eric Garner not been killed by police, they would have been arrested and likely charged with a very minor infraction (disorderly conduct or resisting arrest). They very well may have been detained, given a bond they could not afford. They may have lost jobs, homes, and opportunities. Their lives may have been irreparably harmed. And we would have never heard of them. There are hundreds of thousands of people in this situation. . . . Roughly 75% of

the nearly half a million people held pretrial are detained solely because they cannot afford to pay a bond.<sup>1</sup>

In far too many cities and counties in the United States, despite the constitutional right to counsel for those accused of a crime who cannot afford an attorney, public defender offices are underfunded and understaffed, often so severely that they cannot hope to provide their clients with effective representation. Worse yet, in far too many jurisdictions, pleas are negotiated and entered, bail is set, and other substantive determinations are made without the opportunity for a defendant even to consult with counsel, and these practices include juvenile defendants. These conditions have undermined community confidence in our justice system as much as the alleged abuses of law enforcement.

Public defenders represent 80% of the people in the criminal justice system. They know their clients and their communities, and they understand and appreciate the need to keep communities safe. They have unique and valuable experiences and perspectives to contribute about opportunities for improving relations, increasing trust, and identifying possible reforms. They should have a seat at the table when solutions to the crisis in our justice system are being discussed. Accordingly, we encourage the Task Force to reach out to the defender community as it crafts its recommendations.

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<sup>1</sup> Rapping, Jonathan, *Ferguson and Staten Island: In case anyone doubted the public needs defending...* National Association for Public Defense. December 10, 2014. Available at: <http://publicdefenders.us/?q=node/638>.



# LAW ENFORCEMENT AGAINST PROHIBITION

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Major Neill Franklin, Executive Director, Maryland, USA

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January 2, 2015

Commissioner Charles H. Ramsey  
Philadelphia Police Department  
One Franklin Square, Room 314  
Philadelphia, PA 19106

Professor Laurie O. Robinson  
George Mason University  
4400 University Drive  
214 East Building, MSN: 1D6  
Fairfax, VA 22030

Re: Task Force On 21<sup>st</sup> Century Policing – Testimony Request

Dear Commissioner Ramsey and Professor Robinson:

As perhaps the preeminent police, law enforcement and criminal justice-based organization regarding drug policy and its effect on crime and public trust in policing, and the only international organization of such composition with "consultative status" with the United Nations regarding illicit drugs, Law Enforcement Against Prohibition (LEAP) requests the opportunity to testify before one of the Task Force listening sessions pursuant to an invitation that is hereby requested. ("The Task Force will convene listening sessions where they will hear testimony, including proposed recommendations for consideration, from invited witnesses and also receive comments and questions from the public. The first session will be held in Washington D.C. in mid-January. Subsequent listening sessions and additional outreach details, including the online public comment process, is forthcoming." Excerpt, <http://www.whitehouse.gov/the-press-office/2014/12/18/fact-sheet-task-force-21st-century-policing>)

LEAP has a perspective that is new, insightful, credible, timely, viable and essential if the Task Force work is to be successful, comprehensive and paradigm-shifting, much as the work of the Wickersham Commission is sometimes credited as paradigm-shifting at a time when alcohol Prohibition wreaked havoc on the public's trust of law enforcement and triggered uncontrollable violence during that like era of mistaken intolerance and "morality policing."

LEAP is ready, willing and able to help with the critically important Task Force charge. I may be reached at [neill.franklin@leap.cc](mailto:neill.franklin@leap.cc) or (443) 286-6737.

Respectfully yours,

Major Neill Franklin

cc: Lt. Jack Cole, LEAP Board Chair

# PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING

## Statement of JAMES E. GIERACH of LEAP

Honorable Co-chairs Charles Ramsey and Laurie Robinson and Taskforce Members:

### One Taskforce Recommendation

**LEAP has only one recommendation for this Taskforce:**

**Call upon Congress and the President to End the War on Drugs. Call upon them to jointly push for an Amendment of the Three United Nations Drug-Control Treaties<sup>1</sup> that serve as Fountainhead for the World War on Drugs. Call upon them to replace the Criminalization and Incarceration Model of Drug Control with a System of Legalized, Controlled and Regulated Drug Markets, making Drugs primarily a Health Problem and Not a Law Enforcement One. And Call upon them to introduce a new Drug Policy Paradigm Based upon Individual Freedom, Human Rights, Harm Reduction, Accessible Medications, Economic Development, Fundamental Fairness, Racial Equality and Respect for the Law, Its Enforcers and One Another.**

### The LEAP Organization

My name is Jim Gierach. I am a former assistant state's attorney of Cook County, delegate to the Sixth Illinois Constitutional Convention 1970 and now a director and former acting Board Chairman of LEAP, Law Enforcement Against Prohibition. LEAP is an international, nonprofit organization with "consultative status" received from the United Nations regarding illicit drugs. I am also the draftsman of LEAP's "[Proposed Amendment of UN Drug Treaties – 2014.](#)"<sup>2</sup>

LEAP is an organization composed of currently serving and former soldiers in the war on drugs – police, prosecutors, judges, federal agents, undercover narcotics officers and other criminal justice professionals. After decades of service in the front lines of the war on drugs, we, individually and collectively as an organization, now oppose it. We do so not because drugs are good, but because the war on drugs is worse.

What does the "War on Drugs" have to do with policing in the 21st Century and your Taskforce assignment? Everything.

### Disrespect for the Law and Law Enforcement

As American street gangs prove daily, we cannot have safe streets and drug prohibition. It's one or the other but not both. With drug prohibition not only do we want for safe streets but there is also little *respect* for the *rule of law*, law enforcement and its mission. For example, when [7.4 percent](#)<sup>3</sup> of the U.S. population violates an unpopular marijuana prohibition law monthly, no amount of improved *community policing*, better *training* or racially representative *hiring* can fix the problem. When competing drug gangs fight over lucrative drug turf and battle

police trying to stop their business operations, *violence* escalates, *guns* get bigger and deadlier, and people become “the enemy” and are treated as such, engendering disrespect. The *militarization* of local police and the use of ever-more force (battering rams, tanks, smoke and concussion grenades, assault weapons, etc.) make the police “the enemy” to people on the other-side-of-the-coin and their families, friends, neighbors and relatives, and militarization is the inevitable consequence of drug-war policing, again breeding disrespect. Likewise, in a drug-prohibition environment, *corruption* in the criminal justice system becomes more prevalent, and corruption is again anathema to respect for law enforcement officers, their mission and the law.

Constructively, American voters and state legislatures are changing bad drug laws that police have been asked to enforce for years, doing what the *U.S. Congress* has been unable to do: approve the *lawful* use of *medical marijuana* for the sick. In 23 states and the District of Columbia, voters have repudiated *federal* drug law, changed state law and rethought policing. Likewise, voter approval of the *recreational* use of marijuana in Colorado, Washington, Oregon and Alaska says something about the changing mission of policing. *Uruguay*, the first nation of the world to legalize the recreational use of marijuana, is saying the same thing as voters in these four American states. The lesson: people do not respect laws with which they fundamentally disagree.

How great is the public disrespect for American drug laws and drug-war policing? So great that the *judicial and executive branches* of government are attempting to minimize the harms caused by the prohibition laws enacted by the *legislative branch*, the *U.S. Congress*. “*Jury nullification*” seeks to avoid the harm of intolerant, drug prohibition laws aimed at nonviolent offenders and mandatory-minimum prisons sentences. Within the executive branch, on-the-other-hand, the U.S. Attorney General has administered, in effect, a form of “*executive nullification*” by admonishing assistant U.S. attorneys within the U.S. Department of Justice not to bring certain charges against nonviolent drug offenders to avoid the harm and injustice of those laws and applicable sentencing mandates.

Unfortunately, as America states and Uruguay lead the world out of The Drug-War Dark Ages, the [United States is being pressured](#)<sup>4</sup> by the *United Nations* to get these four states back into prohibition line, as UN officials and agencies call upon Pres. Obama to smash state marijuana legalization. These developments underscore the need to reexamination the mission of American policing in the 21<sup>st</sup> Century to see where policing went “off the rails,” leading to Ferguson, police executions, national protests, examination of the grand jury process, police impunity, poor police-community relations, the alleged use of excessive force, the militarization of local police departments, and the creation of this Taskforce.

### **The Misdirected Policing Mission**

Forever, it has been the time-honored police mission “*to serve and protect*” the public, but that mission has morphed into “*morality policing*,” where violent crime takes a back seat to *drug policing*. Drug-dealer profits and property are subject to seizure, civil forfeiture and a law-enforcement “split of the plunder,” nurturing mission temptation and “*policing for profit*.” In the process, the rate of solving violent crime has plummeted as more police are deployed to stop drug-dealing between consenting adults. The motivation for the deployment is, of course, to accomplish the typical *trilogy seizure* of cash, drugs and guns. Why? Because drugs are “bad”

and “against the law.” Maybe “yes” sometimes to the first notion but “no” for sure to the second because it should not be.

Cops aren’t doctors, and abusing drug users have greater need for medical help than police help, though sometimes that too. The use of mind-altering substances was not a crime until America and the world made it one, and then with fickle selectivity and poor judgment. For example, once upon a time (c.1650), Sultan Murad IV of the Ottoman Empire made smoking tobacco a death penalty crime. In the 1920s and 1930s, American and other countries made it a crime to sell alcohol but Prohibition failed and regulated, legal sales displaced the Al Capone’s and the gang business of that era. Before and after Prohibition, some people died of alcohol. In contrast, no one has ever died of a marijuana overdose yet some Americans are [serving life](#)<sup>5</sup> sentences for pot crimes. Hundreds of thousands die from alcohol and tobacco each year, yet both of these mind-altering substances are outside the recreational-prohibition scope of UN drug treaties and the Controlled Substances Act (CSA). It is nonsensical and difficult to respect these senseless disparities, since drugs constitute a huge part of American policing and the problems assigned to the Taskforce for recommendation. Therefore, we must refresh our memories how we got to the so-called “War on Drugs,” resulting in widespread disrespect for the law and its enforcers.

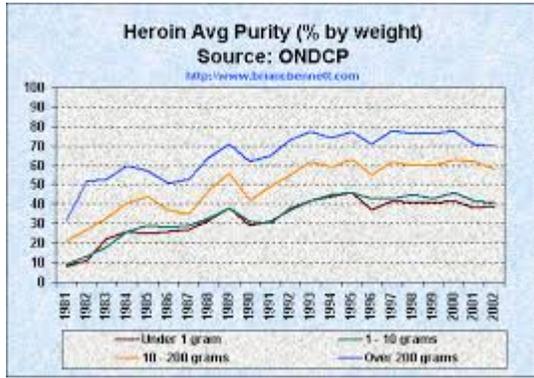
### Some War on Drugs History

America has been fighting the “War on Drugs” with bipartisan political support since Pres. Richard Nixon declared it on June 17, 1971, and even earlier, dating from the U.S. Senate approval of the foundational United Nations treaty that effectively declared a “World War on Drugs” in 1961. The seminal treaty declaring that war is called, “The 1961 Single Convention on Narcotic Drugs” (*eff.* 12/13/64). Article 4 of that treaty provided that the initial [153 signatory and party nations](#)<sup>6</sup> (now 186 nations) “shall” legislate and pass laws that criminalize the *recreational* use (use other than for *medical* or *scientific* purpose) of drugs from marijuana to heroin along with pages listing other drugs in treaty schedules.<sup>7</sup> Every year, the UN drug prohibition list gets longer, according to the [Global Synthetic Drugs Assessment](#)<sup>8</sup> with more than 100 new drugs invented the prior year and at a rate faster than authorities can add the newly invented drugs to UN prohibition lists.

Pursuant to its treaty obligation, “the [Controlled Substances Act \(CSA\)](#) was passed by the 91st United States Congress as Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and signed into law by President Richard Nixon. The CSA is the federal U.S. drug policy under which the manufacture, importation, possession, use and distribution of certain substances is regulated. The Act also served as the national implementing legislation for the Single Convention on Narcotic Drugs.”<sup>9</sup> Thus, the CSA criminalized consensual drug transactions even between consenting adults, [exploding America’s prison population](#).<sup>10</sup> In 1986, [the Anti-Drug Abuse Act of 1986](#)<sup>11</sup> was passed by the U.S. Congress. Among other things, these laws changed the system of federal supervised release from a rehabilitative system into a punitive system. The 1986 Act also prohibited controlled substance analogs. And the bill enacted new mandatory minimum sentences for drugs, including marijuana. When that was done, America had a prison [inmate population of 300,000](#),<sup>12</sup> not the current [2.2 million](#).<sup>13</sup> When the CSA was passed, a kilo of cocaine or heroin was a “big” drug bust,<sup>14</sup> [crack cocaine](#)<sup>15</sup> wasn’t invented, [meth started getting “better,”](#)<sup>16</sup> [ecstasy](#)<sup>17</sup> (alias MDMA, first synthesized in 1912 by

Merck chemist Anton Köllisch) was not a problem and, as noted above, 100 new synthetic drugs created in just the last year did not exist.

At the outset of the drug war in 1971, the best American heroin was only two percent pure but now 80-percent pure heroin, and even 90 percent-pure heroin, is commonplace in America. Thank you “War on Drugs,” or rather “No thank you.”



What as police, politicians and parents have we done to American kids with drug war?

### **50 States and Local Law Enforcement Followed the Federal Lead**

Soon 50 states followed the United States lead, and every state passed its localized version of the UN-mandated, federal prohibition drug laws with thousands of local police agencies to enforce [sumptuary prohibition laws](#).<sup>18</sup> [Gangs](#)<sup>19</sup> began to proliferate, [crime increased](#)<sup>20</sup> and political leaders rather than addressing neo-substance prohibition called for [tougher drug and crime penalties](#).<sup>21</sup> [Pres. Clinton’s 100,000-more-police “solution,”](#)<sup>22</sup> initially federally funded, was a popular response to burgeoning addict crime and turf-war crime caused by the war on drugs but by stepped the core issue, prohibition.

### **World Drug War**

American with her money and international influence inside and outside the United Nations, spread her “War on Drugs” far and wide, annually certified “cooperating nations,” and through Plan Colombia and the Merida Initiative, bought the loyalty and fealty of other nations, including Columbia, Mexico and Afghanistan. But prohibited drugs continued to flow – stronger, cheaper and more available – as noted in the [Report of the Global Commission on Drug Policy](#).<sup>23</sup> World disrespect for the rule of law and its enforcers increased, as weekly [corruption](#) stories were featured in *Drug War Chronicle*, published by StoptheDrugWar.org, and crime and incarceration thrived internationally as it did in America. Prisons filled. New prisons were constructed, filled and crowded. Private-for-profit prisons emerged with government contracts guaranteeing certain occupancy rates.

Eventually, the “Land of the Free” became the “Prison Capital of the World” with the highest per capita rate of incarceration anywhere. Bill of Rights liberties and control over one’s own castle and one’s own body were subordinated to the new policing mission to “get the drugs, cash and guns.” In the “drug-free world” frustrated with endless violence, the public consented

or at least acquiesced to the subjugation of “others” by no-knock entries on warrant execution, drug-dog searches, cameras in the public way, metal detectors in the schools, random drug tests at school and work in the noble quest and greater good of a “drug-free-workplace, park and school.” The courts limited the sphere of “expected privacy,” okaying rampant “*informant policing*,” paid-informants and accomplice-satisfied probable cause, stop-and-frisk tactics, more gun-control, racial profiling if justified by any other reasoning. In a nutshell, what we see today is “Drug-War Policing” and a “Drug-Free World” in full bloom.

### **Drug-War Protagonists and the Drug-War Gravy Train**

Some may disagree with the opinions expressed here on behalf of LEAP. The drug war tempts the “good guys” – law enforcement officers and others – to support a flagrantly failed prohibition and criminalization system, liking the financial rewards that accompany it. The rewards come in many forms, including, but not limited to, more police overtime pay, more police hires and promotions, seized and appropriated drug dealer cash, property, motor vehicles, airplanes, real estate and jewelry. It comes in the form of new police stations, bigger and better weaponry, 1033 programs, Tasers, new squad cars, vests, clothing and equipment. Often time, civil forfeiture practices and procedures following a drug raid, seizure, confiscation and government forfeiture of “drug dealer” properties handcuff citizens’ civil and constitutional protections without a criminal case ever brought, or conviction ever attained. Like Rodney Dangerfield, the War on Drugs “Gets no respect.”

Many industries – prisons, drug treatment, drug-testing, banking, drug selling, policing and academia – are benefiting financially from the war on drugs. Like the “bad guys,” the “good guys are riding the “drug-war gravy train.” We must not allow those financial interests to dissuade us from restoring the credibly and public trust in police officers who bravely and honorably work to serve and protect the public by restoring the traditional “serve and protect” policing mission and ending the drug-war perversion of it.

The drug-war story has brought us a crisis in policing and public support in some quarters that brings us here today. The leaders of policing and academia have offered and will offer their ideas regarding improved community policing, better training, more accountability, civilian review boards, grand jury reform, gentle policing, ending police impunity for misconduct, *ad infinitum*. Many recommendations by others may have merit and capacity for improved policing and better community relations.

However, it is the opinion of LEAP law-enforcers and LEAP criminal justice professionals that without the reform of U.S. and world drug policy, no proposed reform or set of reforms can stop the unending perversion of American values, virtues or right 21<sup>st</sup> Century policing. Thank you for your time and attention.

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Law Enforcement Against Prohibition (LEAP)  
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1 (708) 951-1601

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2 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances  
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4 <http://www.usnews.com/news/us/articles/2014/12/26/study-marijuana-use-has-increased-in-colorado>  
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7 "UN Demands Obama Smash State Marijuana Legalization," 11/21/12,  
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11 United Nations Treaty Collection, the 1961 Single Convention on Narcotic Drugs,  
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27 "History of Methamphetamine," [http://www.drugfreeworld.org/drugfacts/crystalmeth/history-of-](http://www.drugfreeworld.org/drugfacts/crystalmeth/history-of-methamphetamine.html)  
28 [methamphetamine.html](http://www.drugfreeworld.org/drugfacts/crystalmeth/history-of-methamphetamine.html)  
29 MDMA, alias ecstasy, <http://en.wikipedia.org/wiki/MDMA>  
30 Prohibition of drugs, [http://en.wikipedia.org/wiki/Prohibition\\_of\\_drugs](http://en.wikipedia.org/wiki/Prohibition_of_drugs)  
31 In 2011, American had an estimated 1.4 million gang members, and drug tracking was a major source of their  
32 income. [http://en.wikipedia.org/wiki/Gangs\\_in\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Gangs_in_the_United_States)  
33 "Organized Crime and Prohibition," [http://www.albany.edu/~wm731882/organized\\_crime1\\_final.html](http://www.albany.edu/~wm731882/organized_crime1_final.html)  
34 See Footnote 8, *supra*.  
35 "Clinton-Gore Administration, Record of Progress," [http://clinton5.nara.gov/WH/Accomplishments/eightyears-](http://clinton5.nara.gov/WH/Accomplishments/eightyears-06.html)  
36 [06.html](http://clinton5.nara.gov/WH/Accomplishments/eightyears-06.html)  
37 See LEAP Proposed UN Treaty Amendment, page two, *supra*, Note 2: "Principal among the many reasons for  
38 proposing this amendment is the indisputable fact that the prohibition, criminalization, single-voice, top-down,  
39 one-size-fits-all drug policy paradigm has failed for over fifty years. Powerful evidence of that failure is  
40 offered in the June 2011 Report of the Global Commission on Drug Policy and the annual reports of the  
41 Secretariat to the Commission on Narcotic Drugs, 2013 for example, regarding the "World situation with  
42 regard to drug abuse" (E/CN.7/2013/2) and "World situation with regard to drug trafficking"  
43 (E/CN.7/2013/4).

**From: Mark Gissiner, Police Auditor, Eugene, Oregon. 25 plus years' experience in police oversight, Past President of the International Association for Civilian Oversight of Law Enforcement, part of the team that created the Cincinnati Model**

In about 1994-1995 as the Clinton Crime Bill gained traction, an unlikely alliance of various organizations composed the blueprint for the patterns and practices portion of the Clinton Crime Bill. I was one of those participants. At that time, one of our expectations was that DOJ would lead in creating a blueprint for police oversight that was consistent across the nation. Now, two decades later, we still have consent decrees and action that is different by jurisdiction. There are some underlying consistencies, but by and large, each decree or memorandum is different. Even something as simple as canine deployment has different parameters by jurisdictions. What I hope to accomplish with this document is to provide some guidance on the various types of police oversight and their strengths and weaknesses. However, at the end of the day, we are still faced with:

- Policing that far too often disproportionately impacts minorities.
- Implicit and explicit biases promulgated by culture, upbringing and media.
- Police performance evaluation criteria in which the primary and overriding performance measure is how many people are arrested.
- A criminal justice system that most often “taxes” the economically disadvantaged.
- Hiring processes that place too much emphasis on physical capabilities and less on social interaction aptitude and real life experiences.
- Promotional processes that weigh far too heavily on one’s ability to test and little recognition of actual job performance.
- Training that trains, not education that educates.
- Labor agreements that confine leadership from making difficult employment decisions.
- Too often focusing on trouble makers instead of criminals.
- State by state public records laws that too often confine the public’s ability to find out the truth on administrative issues.

### **Different Oversight Models**

There are currently different models for police oversight and review. In the most general of terms, police oversight models differ in the level of dependence by the oversight body on the police in criminal investigations. Additional features that set the models apart include the level of influence exercised over an investigation, the ability to refer an investigation to another police force, as well as the nature of the investigative team.

**There are three main categories of police oversight models: (1) Dependent Model; (2) Interdependent Model; and (3) Independent Model.**

The dependent model essentially represents more traditional "police investigation of police." There is no civilian involvement in the investigation and, therefore, there is a total dependence on the police. There are two sub-categories to this model: police investigating police and police investigating another police force.

In the police investigating police sub-category, the police service is fully responsible for the investigation and administration of public complaints alleging offenses. If there is an oversight body, it does not conduct criminal investigations, but it may recognize complaints regarding service, internal discipline or public trust.

The second sub-category involves "police investigating *another* police force" in specific cases so that the police service does not investigate its own members in instances of serious injury or death. The interdependent model introduces into the criminal investigation civilian involvement to varying degrees. There are also two sub-types to this model: civilian observation and hybrid investigation. In the first sub-type of the interdependent model, a civilian observer is assigned to the police investigation to ensure that the latter is conducted with impartiality.

The hybrid investigation comprises mostly of a civilian oversight body whose involvement in the investigation goes beyond the role of mere overseer. In this model, the police force may be engaged in some form of collaboration with the oversight body, although the latter may have the ability to conduct the investigation entirely on its own.

The independent model is embodied by a totally independent investigation. There is no police involvement in the investigation. The oversight body composed of civilians undertakes independent criminal investigations that cannot be referred to the police force, and may have the authority to make binding findings and lay charges.

## **1. The Dependent Model - 1.1 Police Investigating Police**

The police investigating police sub-type is representative of an oversight agency that does not undertake criminal investigations. It remains essentially a model that exists alongside police forces responsible to undertake criminal investigations into cases involving other police officers.

This model may involve a civilian review body that investigates allegations of disciplinary misconduct or an appellate authority with respect to public complaints about the policies, services or conduct of police officers without interlocutory powers of review. It may be an agency that recognizes complaints limited to service or policy, internal discipline or public trust or it may be an independent civilian body which administers the public complaints process. In any case, the agency is responsible for non-criminal complaints. The composition of the police investigating police model is varied, consisting of a mixture of civilians and former police officers.

Some of the perceived advantages of this dependent model sub-category include the tenet that police have the necessary investigative skills and access to appropriate resources (e.g. forensic support) for the task, in addition to the requisite legal authority and powers to complete investigations, particularly regarding *Criminal Code* issues. Further, others posit that police have a better understanding of the operating organizational and cultural dynamics which can secure more legitimacy in the process in the eyes of members, thereby resulting in enhanced cooperation.

To summarize, some argue that police do not take seriously most public complaints and assign limited investigative resources and expertise to the process. Police officers are deemed to be sympathetic and responsive to informal police cultural norms and perspectives which protect individual officers and undermine the investigative process. Police officers can be pressured by other police and the police culture ("blue wall" "blue curtain", "code of silence") to conduct ineffective investigations. At most salient, this model is deemed failing to meet the basic standards of public accountability.

### **Police Investigating *Another* Police Force**

The second sub-category of the dependent model involves outside police force investigation. In essence, it is still representative of "police investigating police," but in cases involving serious injury or death, police investigate *another* police force. Formal agreements ensure that one police force is not in charge of investigations of incidents involving its own members.

Such mechanisms allow for a perception of independence and objectivity of the investigation and minimize the negative effects of internal loyalty and solidarity on the completion of a fair investigation. The external police invited to conduct the investigation possess all the required expertise and resources to investigate in an effective manner, as well as the necessary understanding of the organizational and cultural dynamics required for investigations. However, the use of an external police force for member investigations remains highly discretionary and inconsistently applied. Having an external police force investigate may provide only the appearance-but not the reality-of an independent investigation. Many seriously question the possibility of independence for external police investigations due to occupational and cultural police philosophies which can jeopardize the protection of the individual member thereby undermining the integrity of the investigation.

There is also little evidence that external police officers do actually obtain higher levels of police cooperation from other police in complaint investigations to justify their involvement, and without public oversight external investigations of this nature often produce similar findings to an internal investigation and result in a low level of substantiated complaints.

## **2. The Interdependent Model**

The first sub-category of the interdependent model combines the police investigation with the input of an independent civilian observer who monitors the impartiality of the investigation. This model allows for engaged civilian oversight and direct influence in the investigative process. One advantage of this model is that it offers a civilian, non-police influence, thereby enhancing public accountability and transparency to an otherwise internal police-centric public complaints process. Civilian observation provides an opportunity to monitor the adequacy and effectiveness of police complaint investigations. Civilian observation of police investigating police provides a level of transparency and public information to an otherwise internal and closed process.

A potential disadvantage is that civilian observers cannot conduct their own investigations and are therefore entirely dependent upon police investigations of police officers in the first instance. Concern also exists as to which part of the criminal investigation the observer should be privy to,

as the observer's presence then allows for compellability in court. Also, civilian observation of police investigations may be viewed as illegitimate, unqualified and inappropriate by some police officers and associations. In addition, some critics argue that it has not created an increase in sustained complaints and publicly satisfactory outcomes.

## **2.2 Hybrid Investigation**

The second sub-type of the interdependent model is a hybrid investigation. This model involves active participation of civilians in the investigative process in the form of collaboration with the police force, management of the police investigation, or, in exceptional circumstances, the ability to assume control of the investigation. The hybrid model assumes some form of engagement between the oversight agency and the police force. The latter is still involved in the investigation but it is obliged to report to, follow, and cooperate with, the oversight body. In exceptional cases, the police may even reassign its authority over the investigation to an outside agency whose role goes far beyond that of an overseer.

One example of this model is the Alberta Serious Incident Response Team (ASIRT), an agency that was created to be deployed in events involving serious injury or death (and other sensitive or serious matters). The ASIRT, therefore, embodies this model given its blend of civilians and seconded police officers who work together on investigations. The hybrid sub-category, however, also allows for the possibility that the oversight body conduct an investigation on its own. In exceptional cases, South Australia's Police Complaints Authority (PCA) may decide to conduct an investigation on its own and recently, the PCA Chair has in fact investigated one case to avoid giving rise to the appearance of bias.

In most cases, however, such occurrences are an exception to the rule. Agencies that represent the hybrid model rely largely on the investigative expertise of the police service and use it as groundwork for the proceedings. The composition of bodies representing the hybrid sub-category varies depending on their nature and mandate.

An obvious advantage of a hybrid investigation model is that it combines the expertise and capabilities of policing with civilian independence and objectivity. Seconded police officers retain essential police powers for the conduct of criminal investigations which civilian counterparts do not normally possess. Seconded or retired police officers also bring an understanding of the police organization and culture, which may produce a more cooperative investigative environment. In addition, seconded or retired officers could have specialized investigative skills and aptitudes that civilian investigators may not possess. Overall, a synergy between the different skills and experience of civilian and police investigators enhance the complaints investigation process.

Furthermore, the hybrid model can be seen as cost-effective and time-efficient. By using seconded or former police officers alongside civilian employees saves the time it would take to properly train civilian investigators who lack field experience. Finally, the hybrid investigation model effectively allows the police to take an active part in the oversight process. By introducing police officers into the mechanism of police oversight and review, it increases the chance that the findings from the investigation are heard and recommendations followed.

A potential disadvantage of this model is that the introduction of police culture and police values through the ongoing involvement of retired or seconded police may inhibit the development of a new civilian organizational culture. This risks jeopardizing the process and it may also be difficult to either second or attract experienced senior police investigators to an integrated model.

### **3. The Independent Model: Independent Investigation**

The independent model consists of an investigation where the civilians are in charge of the investigation and police officers have no formal input of influence over the process involving their colleagues. The key feature that differentiates independent investigation from the interdependent model is that there is no investigative collaboration between the oversight body and the police. For all cases that fall within its mandate, the oversight body investigates alone and does not refer the investigation back to the police force.

An oversight body representing the independent investigation model is an agency composed of civilians who are fully responsible for the investigation. It may have the authority to lay charges. It may offer recommendations that are extremely hard to refuse on the part of the police commissioner, which is the case with Chicago's IPRA.

Members that form the body which represent the independent model may be retired police officers who no longer possess their original police powers, police officers not active on behalf of the police under the agency's jurisdiction, or civilians with no prior police experience.

The key advantage of this model is that by removing control of the criminal investigation from the police influence, the oversight body appears totally independent and objective. A more accountable and transparent culture informs the investigative process and the complainant may perceive it as more trustworthy and therefore may cooperate more freely with the investigators. In some circumstances the independence of the civilian investigative process would provide police with a stronger public validation of their position.

A possible disadvantage of this model is that a lack of police legitimacy may diminish police cooperation and participation which may ultimately lead to unsuccessful and/or failed investigations. A civilian-only investigative/adjudication process may be perceived by most police as being inadequate and unsympathetic to police concerns and their operational realities. Should the oversight body be staffed by civilians with no police experience, it may be criticized as lacking knowledge and understanding of police organization and culture required to conduct fair and effective investigations.

Disappointed by unsuccessful and failed investigations, members of the public will lose confidence in the fully independent civilian review model. Many argue that this is the most expensive model, as it requires additional resources to ensure professional investigations (e.g. forensic services). It may involve higher training costs for skill development, enhancement and ongoing education. Civilian models require special legal and investigative powers in order to deal adequately with serious investigations. This model may be perceived as undermining the authority and responsibility of police management with regard to a spectrum of operational and administrative processes.



January 21, 2015

*Via email to [comment@taskforceonpolicing.us](mailto:comment@taskforceonpolicing.us)*

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

Dear Task Force:

On behalf of the National Women's Law Center, an organization that for over 42 years has worked to expand the possibilities for women and girls in the areas of education and employment, family economic security, and health, we write to offer information and suggestions related to girls and young women of color, particularly African American girls.

The themes of the Task Force's January 13 hearing on Building Trust and Legitimacy included the need for criminal justice reform to address the "school-to-prison pipeline" and the over-criminalization of youth. Indeed, exclusionary disciplinary practices like suspension and expulsion are not only largely ineffective at reforming student behavior but also they disproportionately push students of color and students with disabilities out of school and into the juvenile justice system. This is true for both boys and girls.

For example, African American girls are suspended and expelled from school at higher rates than other girls. In the 2011-12 school year, 12 percent of all African American girls in grades pre-K-12 were suspended from school—six times the rate of white girls and higher than the rate for any other group of girls, and white, Latino, and Asian American boys.<sup>1</sup> Additionally, 19 percent of African American girls with disabilities received out of school suspensions, compared to just 6 percent of white girls with disabilities.<sup>2</sup>

Because of such severe and frequent discipline, African American girls spend more time out of the classroom, which contributes to poor academic performance, increased dropout rates, and higher representation in the juvenile justice system. In 2009-10 African American girls represented less than 17 percent of all female students, but 31 percent of girls referred to law enforcement by schools and 43 percent of girls who experienced a school-related arrest.<sup>3</sup> And despite an overall drop in juvenile delinquency cases from 1996 to 2011, girls' share of delinquency cases increased; among females, the share of cases that involved Black girls went up, while white girls' share declined.<sup>4</sup>

Gender and race stereotypes play a strong role in the disparate discipline and confinement rates of African American girls. Stereotypes of Black women as “hyper-sexualized” and aggressive may contribute to the implicit bias underlying many educators’ and law enforcement officers’ views of African American girls, who are more likely than white girls to be penalized for behaviors that challenge our society’s expectations of what is appropriate “feminine” behavior.<sup>5</sup> For example, Black girls who complain about sexual harassment at school may be labeled as aggressors; those who are assertive and speak up in class may be punished for being “loud” or showing “attitude.” Schools suspend African American girls more often than white girls for minor offenses like dress code violations, or subjective offenses like “defiance” or “disobedience.” At the same time, the impact of trauma is overlooked; behavior that is labeled as “defiant” may in fact be a predictable response to unaddressed trauma or mental health issues. Punishing girls for such behavior instead of providing them with services and support fails to change the behavior or improve their engagement in school, and may even re-victimize them.<sup>6</sup>

Additionally, African American girls are disproportionately vulnerable to involvement in the child sex trafficking industry and to prosecution for such involvement.<sup>7</sup> Girls who are thought of as “criminals, prostitutes, runaways, throwaways, addicts, or juvenile delinquents” may in fact be sex trafficking victims.<sup>8</sup> The trauma these girls experience, particularly if not properly identified and treated, may lead to toxic stress that impedes learning and trigger behaviors that can lead to disciplinary action and arrest.<sup>9</sup> And because of a legal loophole in the federal Juvenile Justice and Delinquency Prevention Act, girls are disproportionately detained for status offenses (which are only crimes when committed by a youth), such as running away or truancy. While these offenses are perceived as defiant behavior, often they are reflections of a girl’s unaddressed health, emotional, economic and educational needs.<sup>10</sup> A girl who is running away from abuse or violence, for example, should not be arrested, confined, and re-victimized; instead, she should be connected with the services she needs to heal and get back on track to complete her education.

Based on the above issues, we recommend the following:

1. Reduce the presence of law enforcement officers in schools and the involvement of police in handling minor school disciplinary matters;
2. Ensure that police or School Resource Officers enter into Memoranda of Understanding with schools that clearly define their role, so they are not handling routine or minor disciplinary matters and are working collaboratively with school education officials;
3. Ensure that law enforcement officers in schools, and those who otherwise come into regular contact with youth or trafficking victims, are culturally competent and receive frequent training on youth development, implicit bias, and race and gender bias, and the impact of trauma on student behavior;
4. Train school personnel regarding implicit bias and the signs of trauma that may underlie behaviors perceived as “defiant” or “disrespectful” so they have tools to support students impacted by violence or trauma without re-victimizing them;
5. Require schools and juvenile justice systems to conduct universal, gender-responsive, trauma-informed screening for all students and detainees, and provide access to gender-responsive, trauma-informed, culturally relevant

- services to address unmet mental health and other needs;
6. Eliminate legal loopholes that permit youth, and girls in particular, to be detained for status offenses and technical probation violations;
  7. Require schools to report publicly, on an annual basis, school discipline data that can be analyzed by race, sex, disability, type of offense, and length of sanction; and
  8. Implement alternatives to punitive discipline practices and the presence of police in schools – which negatively impact African American girls through increased arrests, involvement with the juvenile justice system, and lost learning time – such as positive behavior interventions and culturally-responsive supports, social and emotional learning, peer mediation, conflict resolution, and restorative justice practices.

We appreciate the opportunity to submit comments to the Task Force. If you have any questions, please feel free to contact us at 202-588-5180.

Sincerely,



Fatima Goss Graves  
Vice President for Education & Employment



Lara S. Kaufmann  
Senior Counsel and Director of  
Education Policy for At-Risk Students

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<sup>1</sup> CIVIL RIGHTS DATA COLLECTION, U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, ISSUE BRIEF NO. 1, DATA SNAPSHOT: SCHOOL DISCIPLINE 3 (2014), available at <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.

<sup>2</sup> *Id.* at 4.

<sup>3</sup> National Women's Law Center calculations based on U.S. Department of Education, Civil Rights Data Collection, 2009-10 National and State Estimations, National total, <http://ocrdata.ed.gov/downloads/projections/2009-10/2009-10-Estimations-Nation.xls>. Discipline data are for students without disabilities.

<sup>4</sup> National Women's Law Center calculations based on M. Sickmund, A. Sladky, & W. Kang, Easy Access to Juvenile Court Statistics: 1985-2011 (2014), <http://www.ojjdp.gov/ojstatbb/ezajcs/>.

<sup>5</sup> NAACP Legal Defense & Educational Fund and National Women's Law Center, *Unlocking Opportunity for African American Girls: A Call to Action for Educational Equity* 5-6 (2014), available at [www.nwlc.org/unlockingopportunity](http://www.nwlc.org/unlockingopportunity).

<sup>6</sup> *Id.* at 18.

<sup>7</sup> *Id.* at 16.

<sup>8</sup> *Id.* at 23 (quoting HUMAN SMUGGLING AND TRAFFICKING CTR., U.S. DEP'T OF STATE, DOMESTIC HUMAN TRAFFICKING: AN INTERNAL ISSUE 2 (2008), available at <http://www.state.gov/documents/organization/113612.pdf>).

<sup>9</sup> *Id.* at 24.

<sup>10</sup> *Id.* at 16.



DAVID L. KURZ  
*Chief of Police*

## DURHAM POLICE DEPARTMENT

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RENE H. KELLEY  
*Deputy Chief*  
DAVID HOLMSTOCK  
*Captain*

January 16, 2015

President's Task Force on 21<sup>st</sup> Century Policing  
Office of Community Oriented Policing Services  
U.S. Department of Justice  
145 N Street N.E. 11th Floor  
Washington, DC 20530

Dear Co-Chairs Ramsey and Robinson:

On the heels of the public's reaction to the Grand Jury decision in Ferguson, MO, the police profession is having additional discussion regarding the need to remain connected to the communities they serve. Police managers are coming to terms with the fact that Ferguson affirms that there needs to be continuous dialog to prevent the connections with our communities from failing. Some police agencies are scrambling to reconnect and those already connected are looking for additional opportunities that enhance or preserve their relationships.

For many years there has been a consensus from the profession that community policing is when the police and the community work collaboratively and develop partnerships to solve the issues that they have mutually identified. But it is becoming evident that in some communities there is a need to rebuild trust, a basic element of any partnership. As we enter the 21<sup>st</sup> Century, it may be prudent to review opportunities that will ultimately serve a number of purposes including the reality that communities often get the police agency they want!

The Durham, New Hampshire Police Department is a small law enforcement agency of 20 sworn that has many collaborative initiatives that keep the organization grounded in the notion that we exist to provide services to the customers of the community. Additionally, we have embraced the concept of SWOT which is a method used by managers to evaluate the Strengths, Weaknesses, Opportunities, and Threats involved in a project, business venture or an organization. The goal of a SWOT is to identify the

A NATIONALLY ACCREDITED LAW ENFORCEMENT AGENCY



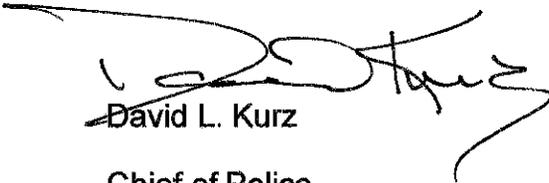
internal and external factors that are favorable and unfavorable to achieve success. The technique is credited to Professor Albert Humphrey who led a convention at Stanford University in the 1970s using data from Fortune 500 companies. As an instructor with IACP's "Leading by Legacy" symposium, a project supported by the Bureau of Justice that focuses upon exposing rural police managers with various proven management systems, I have been presenting the concept of SWOT as an internal approach to addressing organizational well-being.

However as I began providing Technical Assistance to law enforcement agencies that requested services from IACP, it became clear that a SWOT can also be used in ascertaining community insight from the customers' perspective. After all, it is the citizens who are the ultimate arbitrator of what constitutes good police services and if a police organization views the community as customers and strives to meet their needs the collaboration and the partnerships flourish!

The simplicity of the concept and the mutual benefits were astounding. Inviting residents to a meeting where SWOT is used to assist the police department in determining what the customers desired has a host of positive outcomes. The very essence of asking the community of their opinions is appreciated by the community and the officers remain grounded in the knowledge that they residents are in fact customers who must be partners in the delivery of that service. Any reputable and customer oriented business only succeeds when there is respect for the customer, combined with a problem-solving approach and a worthy business approach to treating them as customers! And the SWOT approach, coupled with community engagement to address the elements discussed and discovered through the exercise can only foster and sustain community interaction and goodwill!

Rather than present the working group with a multiple page outline, it is my intent to provide a brief oversight of the concept that has proven successful and the potential for wide-ranging community engagement. If there is a desire to have additional discussion, we are poised to provide whatever assistance we can.

Sincerely,



David L. Kurz

Chief of Police



# NATIONAL BAR ASSOCIATION

January 19, 2015

**PRESIDENT**

Pamela J. Meanes  
St. Louis, MO

**PRESIDENT-ELECT**

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Tallahassee, FL

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**PARLIAMENTARIAN**

Grasford Smith  
West Palm Beach, FL

**GENERAL COUNSEL**

Yolanda Jackson  
San Francisco, CA

Ronald L. Davis

Director

President's Task Force on Policing in the 21st Century

Office of Community Oriented Policing Services

U.S. Department of Justice

145 N Street, N.E. 11th Floor

Washington, DC 20530

Dear Director Davis:

I write to you as President of the National Bar Association (NBA), the nation's oldest and largest organization of attorneys and judges of color representing over 44,000 lawyers and judges, legal scholars and law students internationally. During the first six months of my tenure, which began on August 1, 2014, our nation has been embroiled in a series of racially-charged debates that have been fueled by a series of deaths of unarmed African Americans at the hands of law enforcement officers. Since then, the NBA has advocated that the grave miscarriage of injustice caused by police brutality will only be corrected by legislative reform at the local, state and federal levels by establishing **Training, Accountability, and De-Escalation** of the Use of Force.

As part of this agenda, we have crafted the attached local ordinance, which we hope will serve as a template for municipalities across the nation. We submit this for your consideration and discussion during the Taskforce Teleconference on January 21, 2015. We also hope to have the opportunity to take part in the upcoming listening sessions taking place across the nation over the next several weeks.

Thank you for your consideration of this documentation. We look forward to working with you.

Sincerely,

Pamela J. Meanes

President, National Bar Association

# NATIONAL BAR ASSOCIATION

## **LOCAL ORDINANCE: Law Enforcement shall not engage in racial profiling and will receive continuing cultural diversity training.**

It is the policy of the \_\_\_\_\_ Police/Sheriff Department that employees will not engage in any activities that are discriminatory or indicative of the practice of biased based policing. It is our belief that racial and ethnic profiling in law enforcement is totally and unequivocally unacceptable. *All department personnel will attend continuing quarterly cultural diversity training for the first three years on the force. They will attend cultural diversity training annually after your third year on the force.* All department personnel are expected to conduct themselves with complete respect for the fundamental rights guaranteed by the constitution of the United States and to provide equal protection under the law to all citizens of this nation.

It is the policy of the \_\_\_\_\_ Police/Sheriff Department to patrol in a proactive manner, investigate suspicious persons and circumstances, and to actively enforce applicable laws and ordinances. The department requires that citizens will only be detained when there is reasonable suspicion to believe they have committed, are committing, or are about to commit, a violation of the law.

All sworn officers of the \_\_\_\_\_ Police/Sheriff Department are responsible for enforcing all applicable laws within City jurisdiction as a means to correct inappropriate driving behaviors and habits, ensure community safety by reducing accidents, and to educate drivers. Officers are expected to use good judgment in exercising their discretion. Officers are required to evaluate the severity of the violation in relation to the circumstances and conditions that exist, consider the goodwill of the community, and determine an appropriate course of action that maintains the professional ethic that the department requires of its members. Effective courses of action may include a verbal or written warning, issuance of a citation, or arrest if the violation has criminal penalties.

The basis for any and all enforcement action will be strictly based on illegal or improper activity. Initiating any action based solely on a person's race, color, creed, religion, gender, lifestyle orientation, or physical handicap, is strictly prohibited, and is cause for department disciplinary action.

Officers will receive continued training beyond their academy training regarding proactive enforcement, officer safety, cultural diversity, search and seizure, courtesy, and communication skills. In keeping with the department's mission and values, training programs will emphasize

the need to respect the rights of all citizens to be free from unreasonable intrusion or police action.

Any person may file a complaint with the department if they believe that a \_\_\_\_\_ police officer/sheriff deputy has violated department policies. No person shall be discouraged, discriminated against, intimidated, or coerced from filing such complaint. The complaint may be made by phone, mail, or in person. All complaints are thoroughly investigated by the Office of the Chief and the person filing the complaint will be notified of the outcome of the investigation.

## **The President's Task Force on 21st Century Policing: Citizen Oversight Supports Fair, Firm and Consistent Policing**

### **I. Introduction**

Citizen oversight of law enforcement exists to enable a community's law enforcement officers to

1. Provide fair, firm and consistent policing;
2. Build or re-build trust between officers and the communities they serve; and
3. Prevent avoidable deaths and injuries to citizens and police.

Commonly, a use of force incident occurs that the community perceives as unjust, unreasonable or clearly avoidable, damaging the community's trust in police. Often communities then call for the establishment citizen oversight. However, the establishment of robust oversight faces resistance:

- From the jurisdiction's political leaders for its costs;
- From the subject department's leadership, who resist the idea of an outside body examining and analyzing their decisions; and,
- From the law enforcement unions who contend the public can not understand nor judge officer actions.

Policing fails its community when it is not constitutional, if it lacks integrity, a clear mission and is not conducted by unbiased and adequately trained officers, supervisors, managers and executives. It fails its community most profoundly when officer actions cause avoidable deaths or injuries.

Oversight fails the community if it is not adequately funded, if it lacks integrity, a clear mission and is not conducted by unbiased and adequately trained staff and /or citizens volunteers. It fails if boards, commissions, monitors, auditors or ombudsmen over-identify with either the police or the community. And it fails if oversight is under-resourced or otherwise constrained from conducting the detailed work oversight requires. Like policing, oversight is hard, unglamorous and painstaking work.

### **II. Oversight that Monitors Internal Affairs Investigations: Its Strength; Its Challenges**

Monitoring models provide civilian oversight by conducting reviews of Internal Affairs investigations; such monitoring is conducted inside the law enforcement agency. Monitors can be individual persons, or boards or commission.

*This model functions to identify adequate or inadequate Internal Affairs investigations. Thus, it prompts Internal Affairs investigators to conduct more thorough and unbiased investigations, knowing citizen representative(s) will examine, analyze and comment on IA's work product; this is the monitoring model's strength.* A monitoring model may also face challenges, such as these:

- It may be inadequately trained or untrained in oversight. The subject department may attempt to control the oversight agency's training. If the subject department provides most of the monitor's training, the monitor will not be trained to recognize

flawed IA investigations; flawed departmental policies or poor supervision and/or management.

- It may not recognize insufficiency of evidence relied on in an IA investigation, and thus not require IA to further investigate and explain why the evidence IA relied on is sufficient to make a recommended finding;
- It may have to rely on the same legal department that defends the subject department in criminal, civil and administrative litigation. If a jurisdiction's legal department—city attorney, county counsel, state attorney-- defends the actions of the subject department in criminal, civil and administrative processes, and provides legal services to the oversight agency, a conflict of interest exists. The legal department's integrity is compromised. A conflicted legal department's priority will first be to shield the jurisdiction from criminal, civil or administrative sanctions. With such a priority, the legal department cannot provide unbiased, uncompromised legal services to the oversight agency. Nor will the oversight agency recognize it has received compromised legal advice;
- Its implementation regulations may state a "preponderance of evidence" is to be used in making its determinations, but in fact, it may actually use "beyond a reasonable doubt;"
- It may not have the authority to make policy or discipline recommendations;
- Finally, the law enforcement agency may co-opt the individual monitor, the board or commission with flattery: some examples are
  - Including the monitor, the board / commission in internal departmental events, or engaging with them in social or sporting events;
  - Recommending board / commission members for service in other positions or otherwise shaping the board / commission which may lead to the board / commission's decisions mirroring the department decisions due to the board's overly close relationship with the subject department. Flattered boards / commissions are vulnerable to giving undue deference to the subject department, to assuming what they are told by the subject department is unequivocally true; to identifying with department executives, managers and Internal Affairs, even as the oversight body proclaims unbiased independence.

### **III. Oversight that Conducts Independent Investigations: Its Strengths; Its Challenges**

Independent investigative models conduct investigations outside the law enforcement agency.

*The model functions to give citizens confidence in knowing an investigation will take place outside the subject department.* This is its strength. But an independent investigative model also faces challenges:

- It has the same risk of inadequate training, as outlined above regarding monitoring models,
- Its investigations are potentially hostile and lengthy processes, since subject officers are apt to fiercely resist investigation conducted outside their department;
- Its implementation regulations may state a "preponderance of evidence" is to be used in making determinations, but in fact, it may actually use "beyond a reasonable doubt;"

- It may be unable to compel the subject department and its officers to provide necessary evidence; without such evidence, it may be unable to fully investigate;
- It may not have the authority to make policy or discipline recommendations;
- It has the same risk of conflicts of interest if its legal advisers also defend the subject department and law enforcement officers;
- It, too, may be co-opted by the subject department, as outlined above regarding monitoring models.

#### **IV. Avoiding Inadequate, Co-opted or Diluted Oversight**

Oversight agencies can be effective as long as communities maintain the political will to make their chosen model work with integrity. These conditions must be avoided:

- If the subject department controls who is appointed to oversight positions, the subject department controls the oversight.
- If the subject department controls the budget of the oversight agency, the subject department controls the oversight. The budget of the oversight agency must be sufficient and independent from the subject department.
- If the subject department controls the training of the oversight agency, the subject department controls the oversight. The training of the oversight model must be sufficient and not dictated and provided by the subject department.
- If the same legal department that advises and defends the subject department also advises and defends the oversight agency, a conflict of interest exists. Oversight agencies require independent legal staffs and advice.

Any oversight agency must also avoid three critical errors:

- Failure to be adequately prepared and informed on the relevant case details and governing policies and laws;
- Over-identification with the community or complainant; and
- Over-identification with the police.

If the oversight agency avoids these errors, maintains thoughtful curiosity in examining statements, policies and procedures; is ethical and unafraid to follow the evidence, then and only then can it help law enforcement departments provide fair, firm and consistent policing, maintain or regain community trust, and avoid preventable deaths or injuries to citizens and officers.

And communities contribute to fair, firm and consistent policing by recognizing their law enforcement departments need the community's engaged, clear oversight all the time, not merely when a critical incident, a "lawful but awful" event has shocked the community. Oversight must be maintained over time to help law enforcement maintain the progress it achieves toward more firm, fair and consistent policing.

## **V. Recommendations Regarding Civilian Oversight for the Task Force on 21<sup>st</sup> Century Policing**

That in Consent Decrees related to Pattern and Practice Investigations, the Department of Justice

1. Require the jurisdiction establish and maintain civilian oversight, and that the oversight model have
  - a. Authority to examine deaths, injuries and critical incidents occurring in connection with peace officer actions;
  - b. Authority to compel production of evidence in the conduct of its duties; and
  - c. Authority to make policy and discipline recommendations.
2. Require that the jurisdiction
  - a. Adequately fund the oversight agency including funding for legal counsel separate from legal counsel representing the subject department and / or subject officers in criminal, civil or administrative proceedings;
  - b. Provide balanced, unbiased training such as the Recommended Training for Boards and Commission Members outlined by the National Association for Civilian Oversight of Law Enforcement (NACOLE); and that the agency staff obtain balanced, unbiased training in police conduct investigations.
3. Require the oversight agency produce annual public reports that includes:
  - a. A summary the reason(s) oversight was established;
  - b. The work the agency has performed during the year, including its findings and recommendations;
  - c. The subject department's responses;
  - d. The tracking and trends in respect to complaints;
  - e. An analysis of progress the subject department has made regarding complaint issues, critical incidents including deaths and injuries and continued compliance with issues stemming from the Consent Decree.
4. Monitor the oversight agency's effectiveness during the length of the Consent Decree.

Respectfully submitted,

Sue Quinn

First Elected President (2000-2002), Board / Committee Member (1997-Present) National Association for Civilian Oversight of Law Enforcement NACOLE,  
January 29, 2015

# Testimony to the President's Task Force on Lessons from the Transformation of Northern Ireland Policing, submitted by Professor Sir Desmond Rea and Robin Masefield

## Summary

It is generally accepted that over the past 10 to 15 years, policing in Northern Ireland has been transformed for the better. The starting point for this was the Independent Commission on Policing in Northern Ireland set up under the Belfast Agreement of April 1998; the Commission was chaired by Lord Patten and contained two highly experienced civilian American policing experts.

The Commission's report remains a blueprint for modern policing, dealing with key themes:

- ensuring the police service becomes representative of the community it serves,
- affirmative action and achieving consent,
- engaging all sections of the community in accountability and oversight, with real independence,
- putting human (or civil) rights at the heart of all policing activities,
- policing with the community and neighbourhood policing,
- the policing of civil unrest,
- effective independent complaints mechanisms.

One of the most important recommendations was the creation of a new cross-community accountability body – the Policing Board – which effectively had responsibility for the implementation of the Commission's report.

We believe that many of these issues have direct relevance for those being addressed by the Task Force, and this testimony draws directly on our professional experience to offer specific recommendations. We have sought to set out our views on each of these key issues, relating to the specific topics highlighted in your letter of invitation. We do recognise that there is a fundamental difference between policing in Northern Ireland, where there is one police service and one accountability body, is vastly different the position in the United States with many thousand different police organisations, and different models of accountability and community engagement.

## Police Leadership and the Influence of Police Culture

The Independent Commission said that a human rights-based approach was more than a matter of the philosophy of policing, and it should inspire everything that a police service does... *'it should be seen as the core of this report'*. (This followed the incorporation of the

European Convention on Human Rights into UK legislation in 1998.) This conclusion was underpinned with a number of specific recommendations including:

- a comprehensive programme of actions;
- a new oath to be taken individually by all new and – critically – existing police officers;
- a new Code of Ethics, integrating human rights into police practice; this Code was to be the basis for all future disciplinary proceedings as well;
- the performance of the police service in respect of human rights was to be closely monitored by the Policing Board.

A detailed programme of action was drawn up by the police service to make these recommendations a reality. Crucially, in addition, the Policing Board appointed two dedicated human rights advisers, both individuals of national standing (one of whom went on to be the Director of Public Prosecutions for England and Wales). On behalf of the Policing Board, they drew up the first ever human rights monitoring framework for policing. In addition, they stressed that at all times they were given unprecedented access to the Police Service of Northern Ireland's (PSNI) planning and operations, which enabled the Policing Board to produce a comprehensive annual report on compliance with human rights requirements.

But the Commission were clear that this alone would not suffice to deliver the necessary culture change and cross-community consent. There was too much historic mistrust of the existing police force (the Royal Ulster Constabulary or RUC) amongst a significant part of the community – predominantly nationalists. At that time, just 8% of police officers were Roman Catholics, compared to 43% of the working age population. So the Commission made two key recommendations to change the composition of the new police service – an early severance scheme to facilitate the retirement of existing officers, and an entirely new recruitment process which would ensure through statute that from those candidates who met the qualifying standard and were selected to join the PSNI, 50% must be Roman Catholics. On this basis, the make-up of the police service would change so that after 10 years, no less than 30% of all officers would be Roman Catholic.

While the 50:50 rule (as it became known) was opposed by many representatives of the Unionist community, it remained in place for 10 years so that by 2011, 30% of PSNI officers were Catholic (from a predominantly nationalist background). In addition the proportion of women in the service had more than doubled. This change, very visible in the many day-to-day contacts between police officers and the community, was perhaps the single most important factor in obtaining cross-community consent for the new policing.

Commitment demonstrated by the senior ranks of the police organisation is essential to ensure culture change. Northern Ireland has been most fortunate in this regard, and, aided by the severance scheme which included the opportunity for individuals who might have been opposed to change to depart with dignity, we were able to conclude in our book that the '*New Beginning to Policing*' had indeed been delivered.

**We recommend that:**

- a. the issue of representativeness be addressed, adopting measures to speed up compositional change which may include positive affirmative action;**
- b. human (or civil) rights must be seen not in opposition to policing, but at the heart of it;**
- c. a Code of Ethics, including an appropriate Oath, be applied across police organisations.**

Civilian Oversight

There are four elements, separate but complementary, that we would wish to highlight:

- the creation of a new cross-community accountability body (the Policing Board), made up of ten nominated elected representatives and nine independent members selected through open competition;
- the establishment of ‘District Policing Partnerships’ working closely with the police organisation at local level;
- the strengthening of the independent Police Ombudsman;
- an additional external Oversight Commissioner charged with regularly reporting on the implementation of the change programme.

The Independent Commission wrote *‘A new beginning for democratic accountability is key to a new beginning to policing and to involving the community as a whole in the delivery of policing’*.

We recognise that the exact model of the Northern Ireland Policing Board may not be appropriate in other jurisdictions, but we believe that some of the key components should apply anywhere. The main function of the Board is to hold the head of the police service – and through him or her the whole police organisation – to account. The Commission made clear that the Chief Constable retained operational responsibility, but that he must be prepared to account to the Board for his and his Service’s operational decisions. (Under the legislation, the Board has the power to hold a formal inquiry into an operational matter or to ‘fire’ the Chief Constable, though in practice it has not been required to do either in over 13 years.)

In the Northern Ireland context, the Policing Board was at its most effective when the political members on it were senior figures within their own parties and the independent members could provide an effective check and balance. For the first six years, only one of the two main Nationalist political parties (the Social, Democratic and Labour Party) chose to be represented on the Board, but both the statutory provisions and the approach adopted by the leaders of the Board enabled Sinn Fein to take their places in 2007 when that party decided to support policing.

The Commission recommended the creation of Partnerships, at district council level, that would bring together locally elected representatives, members of other statutory agencies and

the new Police Service. These would not be accountability bodies as such, but the Partnerships would a) survey and represent the interests of the local community, b) prepare draft annual plans with the local police commander, and c) submit annual reports to the Policing Board and the public.

The original bodies have now become Police and Community Safety Partnerships, building in the wider agency representation on a statutory basis. This rightly recognises that there are many issues, perhaps particularly at local level, that cannot be solved by the police alone.

The Police Ombudsman has two key roles – to investigate all individual complaints made against members of the PSNI, and to look at thematic issues. The Ombudsman has investigated and reported on incidents of the use of force, including for example the use of the Taser and hand-held incapacitant sprays. The Ombudsman's reports, and their consideration by the Board, have provided the general public with wider reassurance.

The Independent Commission recommended the establishment of an additional external mechanism to oversee the change programme. The Oversight Commissioner, (first, Tom Constantine the former head of the US Drug Enforcement Agency), published detailed assessments three times a year up to May 2007. While the Commissioner had no legislative authority to give effect to his findings, the assessments undoubtedly had great moral suasion and provided further public assurance.

We believe all four elements of oversight may be needed to reinforce a fully comprehensive transformation programme.

**We recommend that:**

- a. independent accountability bodies with political representatives as well as independent members, are created at appropriate levels, with powers to hold leaders of police organisations to account,**
- b. local partnerships be established, that represent the community which the police serve, and allow for effective dialogue with local police commanders,**
- c. effective independent complaints mechanisms, such as an Ombudsman be set up,**
- d. for the duration of the change programme, additional external oversight be appointed to assure effective implementation.**

Use of Force, and Handling Mass Demonstrations

Historically, these were issues that have impacted adversely on community attitudes towards policing. There are three key elements:

- the equipment available to the police organisation;
- the approach adopted toward the policing of conflict, whether that be an individual contact or wider civil unrest;
- the crucial relationship with policing with the community.

The Independent Commission was concerned at the lack of alternative less-lethal equipment available to the police in Northern Ireland at that time, and recommended a major research programme. This was taken forward by Northern Ireland and Great Britain in international collaboration with Pennsylvania State University and the National Institute of Justice in Washington DC. The International Law Enforcement Forum (ILEF), that reflects that on-going partnership, is we understand also submitting testimony on these issues.

Traditionally, the RUC had tended to adopt a responsive approach towards policing civil unrest, resorting to the use of plastic baton rounds when under attack by petrol bombs or other incendiary devices, not least for officer safety reasons. However the PSNI has placed much more emphasis on a) prior engagement with community representatives to defuse the tension, b) proper planning including human rights dimension, and c) presenting a less militaristic approach towards policing conflict. At all levels, from the top of the Service through to neighbourhood police officers, all the police are very conscious that mishandling a community dispute or a riot can do lasting damage for relations between that community, the organisation as a whole and the individual officers who will have to continue to interact with that community.

**We recommend that:**

- a. there is greater recognition of the inter-relationship between the use of force and community policing,**
- b. when operations are required to deal with mass demonstrations, the civil rights of all should be addressed in the planning process,**
- c. equipment that is appropriate to the needs of the particular organisation and situation should be supplied.**

Conclusion

We conclude by summarising the key points that we believe apply in your context. First is the importance of recognising both the issues and the opportunity. In our view, the problem relates principally to consent, and the confidence of communities in policing. Consent is achieved through police professionalism allied to operational responsibility, with above all accountability that is independent and public. The Northern Ireland experience has also shown the practical value in having those principles underpinned with human and civil rights.

Footnote:

Desmond Rea was the first chairman of the Northern Ireland Policing Board from its establishment in October 2001 up to May 2009, while Robin Masefield was the senior civil servant leading the facilitation of the implementation of the Independent Commission recommendations. In December 2014, we published a book entitled *Policing in Northern Ireland, Delivering the New Beginning?* Copies can be provided to members of the Task Force.

## References

*A New Beginning: Policing in Northern Ireland*, The Report of the Independent Commission on Policing for Northern Ireland, published September 1999

*Policing in Northern Ireland, Delivering the New Beginning?* By Professor Sir Desmond Rea and Robin Masefield, published by Liverpool University Press, December 2014

*The Northern Ireland Policing Board's Annual Human Rights Report*, (report numbers 1 to 10 have now been published); [www.nipolicingboard.org/human\\_rights\\_annual\\_report](http://www.nipolicingboard.org/human_rights_annual_report)

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

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<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).

<sup>vi</sup> 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.

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- <sup>ix</sup> BreakOUT!, *We Deserve Better!* (2014), available at: <http://www.youthbreakout.org/sites/g/files/g189161/f/201410/WE%20DESERVE%20BETTER%20REP%20ORT.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 Bazargen, *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 21<sup>st</sup> Century Policing**

Cincinnati, Ohio

January 30, 2015

### **TESTIMONY OF IRIS ROLEY, Black United Front of Cincinnati**

Members of the Task Force: My name is Iris Roley and I am very honored to be asked to submit testimony to you about our experiences in police reform right here in Cincinnati.

The Cincinnati Black United Front is a membership advocacy organization that came together in 2000 after thirteen downtown restaurants locked their doors against black people. This was during the Cincinnati Jazz Festival, an event that caters to African American music lovers throughout the Midwest, and which was then in its 30<sup>th</sup> year. The Black community was appalled that the City of Cincinnati was allowing restaurant owners to refuse service to blacks, even as those restaurants and downtown business received our tax dollars to complete their development projects.

Then the city experienced what we still call "2 in 24." Two unarmed Black men were killed by Cincinnati police within 24 hours, the 13<sup>th</sup> and 14<sup>th</sup> killing in 5 years: Jeffery Irons and Roger Owensby Jr. The African American Community was at its tipping point and at many community meetings citizens asked us to refocus and review what was happening between our community and the police, so we did. We began organizing around the issue of these deaths. As word got out, civil rights attorney Al Gerhardstein, ACLU of Ohio attorney Scott Greenwood and local criminal defense attorney Ken Lawson came to the CBUF and suggested working alongside of us on this journey. We all knew that this effort was not a jump-in-and-leave. It would require long term commitment. . We did know that change must occur. The CBUF designed a city wide effort to collect stories from African Americans who believed they were or their families were abused by the police in Cincinnati. Hundreds of people showed up. We were preparing a class action claiming racial profiling by the Cincinnati police.

There were also fifteen civil rights lawsuits filed in federal court, alleging wrongful shootings of young black men.

Fifteen! In fact, in April, 2001 police shot unarmed Black nineteen-year old Timothy Thomas. This shooting sparked a rebellion. Black Cincinnatians refused to take this anymore, and we said so in the only way that could get the issue the attention it deserved. The City and its police department had not listened to us before but after the rebellion everyone agreed that something had to be done. But what?

We knew that we needed to reform the Cincinnati Police Department but how do you do this with a community that has experienced such despair and anger about its police department?

We came up with the Collaborative Agreement (CA)!

The CBUF was an important party and class representative in formulating and implementing the Collaborative Agreement which was a ground-breaking agreement between community activists, neighborhood stakeholders, the police union, the City of Cincinnati and its police department. It was negotiated in 2001-2002 in the direction of Judge Susan Dlott of the federal court of the Southern District of Ohio. It settled the class action and also the fifteen pending lawsuits, but it was much more than that.

Members of the CBUF believed that in order to change the police's perception of people in our communities, we needed dialogue and rule changing. It had to be done with the community members; it couldn't start as a police project. This has been a success in improving both the police-neighborhood relationship and the way policing is done in Cincinnati. Although nobody would say that the Cincinnati Police became perfect, or that communities of color in Cincinnati have miraculously begun singing harmony with our police force, we all know that very real improvements have been made and we believe they are sustainable.

I am going to explain this in light of the topics you asked us to address. Three of those topics are linked to the Collaborative experience. They are:

- *police culture*
- *civilian oversight*
- *civil rights enforcement*

The other items on your list are important considerations in working to improve our police departments, but I truly believe that without deep changes in police culture, *sustained with true citizen involvement and oversight*, and enforced with vigorous civil rights laws, all the rest are just technical fixes that will not have deep or lasting effects.

So what was the Collaborative?

It was a legally-enforced agreement among three parties: the city, the police department, and the CBUF/ACLU. It was legally enforceable because it was a settlement agreement in civil rights lawsuits and a class action alleging racial profiling. I was the project manager for the CBUF who designed the process of collection of stories of what happened to African Americans at the hands of the Cincinnati police and I can tell you that years of aggressive police actions and behaviors resulting in injuries, deaths, unnecessary detainment, racial profiling and illegal arrests created deep lingering resentment and distrust. The Collaborative marked the point at which we said, "OK, everyone knows how terrible this is and now we are going to do something about it." The process leading up to the agreement helped us all define what we would do about it.

The Collaborative included outreach to the entire Cincinnati community through eight stakeholder groups. The community outreach included responses to an online questionnaire as well as interviews with citizens for whom a computer was not easily accessed. Feedback sessions were used to collect and discuss the information gathered. Over 3500 persons participated in this process. The Collaborative also included an expert research effort headed by Dr. John Eck, who

was asked to identify best practices and model programs. The results of this community dialogue and expert research were shared with the parties for use in settlement negotiations. Everyone had a say about what they believed the problems were, what they wanted in the future and how they thought things could change. This process looks to the future. It does not dwell on the past. It asks people, everybody from so many different neighborhoods and professions, to imagine what they want for their city and its police. It gets everybody thinking constructively.

Next, the attorneys and parties— and of course, the city attorneys and the police chief -- all met to decide how to settle the lawsuits and what to do about changing the police culture in Cincinnati. This process was not pleasant. The people at the table had very different ideas about what should be done to improve the Cincinnati Police. But we worked it out. Eventually we drafted an agreement that had some very important and farsighted requirements in it.<sup>1</sup>

We knew we were making progress when the police union showed a draft of the Agreement to its members and asked them to vote on whether to sign it. A majority of the unionized police officers agreed. Soon thereafter, the City and the Black United Front, as well as the ACLU and attorneys for the many people in the class action signed the Agreement.

I mention this history only to point out that this legally-binding agreement came *from the people*. It didn't come from the mayor or the police chief or the federal Department of Justice that was conducting its own review of Cincinnati policing at the time. It came from police officers and neighborhood residents and business. It came from the victims of police brutality and their lawyers. *It worked because it started at the grass roots level.*

Implementing the Collaborative, getting compliance with its provisions, was a rocky process. It was not all hearts and roses. You can read about it in the reports from Saul Green, who was the monitor for both the Collaborative Agreement and the consent decree the City negotiated with the Civil Rights Division of the U.S. Department of Justice.<sup>2</sup>

There were two things that the Collaborative did that are absolutely key to its success. Both of them are about including residents of the city – in other words, the people who are policed.

These two things link to the Task Forces' request that we discuss *civilian oversight*. But first I have to say that this term does not sound right at all. We are not civilians. Civilians are people subject to military authority. Whenever well-meaning police reformers talk about “civilians,” it riles me. If I am a civilian, that means the police are soldiers. And if the police are soldiers, that means I am the enemy. Let's start changing police culture right now by banning the word “civilian.” *We are not civilians. We are neighborhood residents and we are citizens of this city!*

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<sup>1</sup> *In re Cincinnati Policing*, U.S. District Court, Southern District of Ohio, Western Division, Case no. C-1-00-317. The document is attached to this testimony.

<sup>2</sup> See [www.cincinnati-oh.gov/police/permits-auctions-references/departments-of-justice-agreement/](http://www.cincinnati-oh.gov/police/permits-auctions-references/departments-of-justice-agreement/)

The first powerful thing that the Collaborative did was establish a Citizens Complaint Authority that has subpoena and investigatory powers. (It wasn't a "Civilian" Complaint Board!) The second thing, even more far-reaching, was to require that the Cincinnati Police Department would use Problem-Oriented Policing (POP) as its strategy of policing in the future.

Problem-Oriented Policing is *not* Community-Oriented Policing, whatever that may be. It is not about putting officers on bicycles or having more officers take sensitivity training or having police and residents get to know each other. It is about requiring that problems of crime and disorder in the neighborhoods be identified by the neighborhood residents themselves, and then they work with the police to figure out how to do something about it. The police don't decide what to do and how to do it. The people and the police decide together.

The police might come to a neighborhood and say what they are going to do about crime and maybe their plans are good. But if the people don't understand it or agree with the plans, then relationship between the police and the residents will not improve even if the crime goes down.

POP is about both reducing crime and improving police-neighborhood relationships. The CA specifically said that. The CA also explained what POP is and there are many other excellent reports and studies that can tell you all about it – many of them coming from Dr. John Eck at the University of Cincinnati.<sup>3</sup>

POP was the way the police and the African American neighborhoods were able to begin to work together. This is the only way I know to build trust. It has to come first from the people not the police.

But POP is probably not sustainable unless there is someone to organize and run the Problem-Solving teams in the neighborhoods and that person cannot come from the police. The police are paid public servants and because they have a budget they tend to take over this problem-solving process. They have good ideas and they start to put them into practice and they are paid to do it, but the ideas don't come from the people. The people won't understand or want the police initiative. They will think the initiative won't help them and maybe will actually hurt them. The only way to be sure the Problem-Solving comes from the affected neighborhoods themselves is to pay community organizers to do it, just like the police are paid.

So we also instituted the Partnering Center to implement the Problem-Solving Policing. The money came from private donations but it would also be possible to do it through their community boards or other grassroots groups.

Getting back to the topics you, the members of the Task Force, have asked us to address, I will outline my recommendations in terms of three of them: 1. *Changing police culture*. 2. *Citizen Engagement (as opposed to Civilian Oversight)* and 3. *Civil rights laws*.

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<sup>3</sup> Herman Goldstein, "Improving Policing: A Problem-Oriented Approach," *Crime and Delinquency*, Vol. 25 No. 2 (April 1979); David Weisburd, Cody Telep, Joshua Hinkle, and John Eck, "Is Problem-Oriented Policing Effective in Reducing Crime and Disorder?" *Criminology & Public Policy*, Vol. 9 No. 2 (Feb 2010).

## RECOMMENDATIONS

### ➤ *Changing Police Culture*

Stop using the word “civilian.” We are all people, not armies and enemies.

Insist that achieving trust is as important as reducing crime.

Formulate methods of crime reduction that do not rely on aggressive confrontation.

Train officers into using these methods of problem-solving from the very beginning, as recruits in the police academy.

### ➤ *Citizen Engagement*

Invest in community organizing that will connect to the police.

Institute a Citizens Complaints Board with independent powers and members chosen from different communities. Use the information from this Board to give feedback to the Police Department about problems and how to improve.

### ➤ *Civil Rights Laws*

Recognize that federal interventions will be most ineffective without local community and police department buy-in.

Encourage a collaborative process of citizen and police involvement in determining future directions for policing in their city.

Whenever possible, merge the results of this citizen-police process into legally binding orders in section 1983 class actions.<sup>4</sup>

Monitor the Memoranda of Understanding under 42 U.S.C. sections 14141 in conjunction with Collaborative Agreements formulated by the local parties themselves.

Again, let me say that I appreciate the opportunity to tell you about our citizen-police Collaborative. I hope you will visit the neighborhoods here in Cincinnati while you are here and see the great improvements we have made – everything from cleaning up blighted buildings to reducing homicides – and know that these improvements are the result of police and citizen collaboration. Thank you.

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<sup>4</sup> The City of New York is ready to start its Collaborative Process (called the “Joint Remedial Process” there) as the remedy to illegal stop-and-frisk practices and policies. This was the order from *Floyd v. City of New York et al*, decided in 2013 in the Southern District of New York. In that case, Judge Shira Scheindlin cited the Cincinnati Collaborative Agreement as the model for moving forward in finding alternatives to unconstitutional stop-and-frisk.

Letter in response to the:

**PRESIDENT'S TASK FORCE ON POLICING IN THE 21st CENTURY**

I respectfully submit my narrative to the President's task force on policing in today's society. I believe the most imperative objective is to stop the currently ran law enforcement industry from operating with such hatred and malice in the towns and cities in America. The current mentality of the law enforcement industry is produce judicious results that have "teeth" in it. This "result" is leaving a wake of pain, suffering and mental illness in our society. Our families have been victims of these practices for decades and it is time to call for an immediate stop to the war on families in America. Officers are resorting to any means to bring action against citizens that they are using illegal means of surveillance, entrapment, testilying, property seizure, obstruction, false arrest with impunity, with out due process and in violation of basic dignities of humanity. And to know that a tactic is wrong but to do it to make money for the law enforcement industry is barbaric and predatorial.

With the amount of money we are spending on this hate/pain based penal system, we could have give them a masters degree and a house to own. Instead we destroy them mentally, physically and spiritually. And send them out in the world to spread a toxic mind pool. We had them and we could have helped them instead of causing more pain.

This is a suggestion and a challenge! The challenge is give me the money you spend on keeping them locked up for four years and I will produce better results for society. I will produce a more educated, loving, caring member of the human race who owns a piece of American and this world! This can be done easy! We must teach them how to love themselves and others in this world! And to let People love them. This is important for a person but instead we create a trail of tears and manifest a pain filled destiny.

Requiring officers to wear body cameras is only one good suggestion for reform. Other strategies should include random drug testing for alcohol, illicit drugs and steroid usage. Frequent back ground checks to ensure that the officer himself has not been involved in illegal activities such as domestic violence, duii, neighbor dispute, or any activity that would influence the way he responds to emergency and crime calls.

Also a national rating system based on criteria that rates an officers performance from the time the incident starts to the final disposition of the case. The rating system would be public so that officers disciplined for negligence or laid off with one force can not easily be re-hired by simply moving to another region of the county. The rating would include input from the courts to monitor use of illegal tactics for means of prosecution such as testilying, perjury, false lab tests, coheresion, or any other conflict of interest.

There needs to be an agency created to over see the licensing and complaints of law enforcement officers while providing legal assistance to a citizen that has been injured by over zealous, lazy, spiteful or derelict police practices. It would need to be able to look into claims of wrong doing and provide legal recourse to all citizens that have been denied basic due process. The average citizen can not petition the ACLU for help with their legal situation or complaint of miscarriage of justice. We need access to a real

support and a department that can provide a real check and balance to illegal practices of the entire justice system.

For too long our legal system and law enforcers have manipulated outcomes that have resulted in prison over crowding and recidivism. This is the desired result and the prison for profit pipeline must be put to an end. Like in animal husbandry, if you have a problem with animals on your farm – you, the farmer are the problem. For example a raccoon breaks into the henhouse every night and kills a hen. As the farmer, you are going to fix the fence where the animal is getting in so that it can no longer pose that threat to your hens. You wouldn't blame the raccoon for acting like a raccoon. You would fix the whole in the fence where the raccoon enters (your management problem). To continue on in this manner night after night is mentally, physically, and spiritually lazy. What is bad is we don't recognize we are perpetuating the problem.

The problem we have with crazy dogs in cages which are unresponsive to any commands. With chaos in their eyes, unable to make any personal connections or relationships, they can not walk a straight line when let out of their cage. When you ask the dog to come, it looks at you and runs away but it doesn't know where to go. When the dog is out of the cage it can become confused and violent. And is considered dangerous in so called "regular society" which perpetuated the need for a cage which made the dog even sicker. If there is a problem with your animals it is a management problem.

A few answers could be:

1. Get out of animal management business. It could not be for you and you might be causing a lot of pain and suffering.
- 2 Call on the wisdom of the dog whisper and the science of Pavlov's dog and come up with the near perfect solution with way less pain and suffering for everything. It's not what to do but what not to do. Just stop now. That would be way less money and simpler which makes it a better technology.

My dog was a city dog owned by a colonel in the military who kept the dog in a small cage its whole life. I took the dog and set it FREE!! At first it did not know how to run. She didn't even know she was a dog. I called her and she ran away into the wild. She came back to eat and would run back into the wild to find its freedom. Eventually TRUST and RESPECT was ESTABLISHED. And completely restored the dog to a dog you could talk to. Furthermore, it viewed me as some kind of master of freedom and wants to please me and loves me much. More loving management technology has excellent results!

I live in the country in the woods, in the forest with the mountain lions that were on my property before me and a bear that lives next to me. A hunter shot its mother. The rattlesnakes I live around are quite civilized. The big female I befriended knew my fear because it evolved around fear because it has no arms or legs and it slithers on the ground. They know you are coming from a distance. They feel the ground. They have eyes like a lie detector and can tap into your fear and use it against you. They know what kind of person and threat you are because of your fear. So I became its friend by

overcoming my fear and projected loving thoughts towards the rattlesnake using loving mental images of my grandmother and my horse. The snake stopped rattling and uncoiled out of defense mode. I sat down beside her to get to know her. She put her tongue out to meet me and I mimicked her poking my tongue out a few times and looked away passively to indicate peaceful intent which I could feel it already knew. The snake's brow stopped frowning and turned to pure curiosity and the beginning of a loving relationship for the past six years. She knows me completely through my fear which is the truth about me. Rattlesnake knows me better than my friends and family. Also I can feel the rattlesnake when it is around me with out seeing it with my physical eyes and teaches me to use my mind's eye. She is a good snake, nice well mannered, completely civil. Her teenage son came out and wanted to start trouble with me and the mother snake came out and laid across the aggressive teenage snake and stopped its aggression. The teenage snake went back into its house. I was thinking what a pretty snake. And the snake was a relaxed like a loving pet. And we sit on a rock together in the sunshine. We learn from each other I learn that truth is powerful in nature.

Maybe this can help you with your human management problems.

In closing since I was talking about masters of freedom, I would like to thank Obama for all he has done. I send my most powerful thing I have, my love, for you and your beautiful family. May my love protect you from that snarl of hate.

To Eric Holderman, I love you and your family and I hope my love will lay you down in a beautiful place in mankind's history!

PLEASE, OH GOD, DON'T STOP THE FIGHT!!!!

Love Always,  
Think Tank Johnny

01/20/2015

Dear Committee:

Thank you for the opportunity to provide meaningful feedback on the topic of policing in the 21<sup>st</sup> Century. Assuming you have clearly identified the major problems our society is facing due to poor police practices in municipalities all over the nation, I have included a list of the most important changes I believe need to be accomplished in this era of reform.

- De-funct current corporate culture of good ol' boy-ism and cronyism
- Full operations and financial audit of all policing municipalities
- Full records audit that include exit intercept reviews of both witness and alleged perps to match to police officer reports
- Criminal prosecution for officers caught obstructing justice with tactics of testilying, warrantless eavesdropping, coercion, falsified lab results, witness tampering, charging exaggerated crimes, false arrest ect
- No transfers for police that have been implicated in a serious breach of performance to another part of the country to continue policing without recourse
- Stricter licensing of public law enforcement personnel
- Drug testing for steroid, alcohol and illicit drug use of law enforcement personnel
- Mandatory continued education for law enforcement personnel in civics, law and cultural awareness
- Mandatory residency of beat cops in the neighborhoods they patrol
- Change in national policy, mandated by the people, making it illegal to obstruct the cause of justice, to make illegal abuses of power designed to fabricate or engineer a desired outcome in the courts
- Clearer checks and balances between levels of the judicial and executive branches of government and criminal convictions for obstruction and due process violations – Yes, we can sue City Hall.
- The elimination of all “three strike” laws and policy change on mandatory sentencing
- Immediate end to the war on drugs including release of prisoners sentenced to laws under the failed policy
- Simplify the criminal code updating it to reflect our modern technological society
- Restitution for any individual falsely imprisoned by violation of their constitutional rights and due process of law
- Citizen Review Board charged with approving all written training materials and protocols used in Police Academies
- End the “prison for profit” pipeline and return the purpose of law enforcement to serve the public safety

Sincerely,  
TTJ

## NON-VIOLENT PROTEST AND BOYCOTT OF THE LAW ENFORCEMENT INDUSTRIES AND THEIR UNIONS

This protest is designed to stop quasi legal law practices and the wake of mental illness it creates in our society and stop **Law Enforcement BOONDOOGLE**. Some say fear, pain and war is how to advance human kind and dark forces do this through a dark shadow of bloody destruction and trickery. But a more meaningful and long lasting advancement for humankind comes from enthusiasm and love for the world. If there is no loving intent, our civilization will parish in the rubble pile and we will take the world with us! This fact can curse us from the past and the future. So, we present this silent protest designed to empower the citizens that have been molested by un-just law practices. If you feel that you were *handled* without loving intent and de-validated unjustly by your recent encounter with law enforcement personnel, or the officer handling you operated as a SLAVE MONGER instead of a PEACE-KEEPER, then this protest is for you. Our dollar is a four-edged sword which makes or breaks a community. Where you spend your dollar matters! **DON'T SPEND YOUR MONEY IN LANE COUNTY**. This is a legal and non-violent protest. You can encourage your friends and family to join the protest or it can be your private and silent choice.

First thing you need to know: **Law Enforcement BOONDOOGLE** needs a tax base to exist. You need to stop paying into the tax base that is molesting you! This means purchase all products, goods, and services outside the county. Purchase your goods online through sites such as: Amazon, Alibaba or Ebay. They will offer you great deals, cheap and better selections and many times free shipping. This takes the money out of the tax base that is being used to operate the **Law Enforcement BOONDOOGLE** AGAINST YOU and YOUR LOVED ONES!

If that simple action of protesting with your pocketbook feels correct to you, there are additional ways to monetarily thwart the efforts of **Law Enforcement BOONDOOGLE**.

Students that have come to this community for an education have been a target for the **Law Enforcement BOONDOOGLE** that uses quasi legal practices to take money from them (and their parents). This protest is for you! Get on your computer and **BUY-OUT** of Lane County. Better yet, go somewhere else and get your education.

Homeowners sell your property under tax appraised value and move to a place with more sunlight and better air quality. Sell your property "as is" without using services or goods to increase the value. This will bring down the area's property value and affect the tax base that is being used to operate the **Law Enforcement BOONDOOGLE**. **BUY-OUT** of Lane County.

If you practice a trade such as photography, carpentry or mechanics, consider working on a barter basis or forming a non-profit company. This will lower the tax base and is your legal choice. **BUY-OUT** of Lane County.

If you are not a student and have no money or home and still wondering how you can help, the answer is simple. Continue to use the county infra-structure without contributing to the tax base. Poverty stricken citizens are the prime target for **Law Enforcement BOONDOOGLE**. In 2013, tens of thousands of pedestrians have been stopped by police force on the streets of Eugene resulting in hundreds of thousands of dollars in revenue from fines that fund the departments that operate the **Law Enforcement BOONDOOGLE**. THIS PROTEST IS FOR YOU!

Your immediate action is appreciated. Remember **BAD LAW: NO MONEY**. This protest is for you – buy out of Lane County.

### FUN FACTS:

"Wyatt Earp was a booger eating whore house bouncer with a tin badge and a gun with big bullets it in." ~ler4me

"Disenfranchised poor people are what made one of the most powerful corporations in the world, Wal-Mart."~John Doeright

"I was walking by the Industrial Center (the Court). I went in to look at the people and saw their eyes full of pain and fear and now I am a moved into service. I'm just a concerned American!" ~K.Ramage.

Paid for by: **Think Tank Johnny**

**Committee for Love and Freedom for the American Bastard**

special thanks to davy eason

COPY AND PASS ON