

THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING

Future of Community Policing **Submitted Public Comment Received by February 24, 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 Future of Community Policing. Twenty 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 Future of Community Policing:

1. Ajanaku, Kilolo: National Executive Director-World Conference of Mayors' Dr. Martin Luther King, JR American Dream Initiative.
2. Bell, Michael: Lt. Colonel-United States Air Force
3. Brown, Steven: Journalist/Public Relations Consultant
4. Coffield, Faye
5. deLone, Madeline: Executive Director-Innocence Project
6. Dignity in Schools Campaign
7. Dotson, Jimmie: Chief (ret.)-Houston Independent School District/ Chattanooga PD
8. Fox, Lawrence: Supervising Lawyer-The Ethics Bureau at Yale
9. Frimpong, Allen: Activist-Malcolm X Grassroots Movement: New York's Self Defensive Campaign
10. Gomby, Becca: SDR Academy
11. Horn, Zachary: Ph.D.-Aptima, Inc.
Halverson, Kent: Ph.D.-Aptima, Inc.
Damari, Rebecca: Ph.D.-Georgetown University
Logan-Terry, Aubrey: Ph.D.-Georgetown University
12. House, Tanya: Director of Public Policy-Lawyer's Committee for Civil Rights Under Law
13. Ifill, Sherrilyn: President/ Director Counsel-NAACP Legal Defense and Educational Fund, Inc
14. Johnston, Megan: Executive Director-Northern Virginia Mediation Service (NVMS)
15. Lawyers' Committee for Civil Rights Under Law
A. Phillip Randolph Institute

THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING

Black Youth Vote

Empowerment

Hip Hop Caucus

Leadership Conference on Civil and Human Rights

Muslim Advocates

National Association for the Advancement of Colored People (NAACP)

NAACP Legal Defense Fund

National Coalition on Black Civil Participation

National Council of Churches

PICO National Network

Rainbow PUSH Coalition

16. Morial, Marc: CEO-National Urban League

17. Nagin, Daniel: Professor-Carnegie Mellon University

Heinz, Teresa and John: Professor-Carnegie Mellon University

18. Rocha, Nuno

19. Samuels, Robert: former Acting Director-DOJ Office of Weed and Seed, 2002-2004

20. Works of Wonder International

American Founding Fathers, President Abraham Lincoln, Sister Genevieve Clark, Sister Rosa Parks
A. Philip Randolph, Dr. Martin Luther King JR American Dream Team Initiative



Reply To:
World Conference of Mayors
7212 Lost Spring Court
Lanham, MD 20706
240-353-3483

February 18, 2015

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

**Testimony Submitted to
The White House Taskforce on
21st Century Policing
Listening Session**

Good Morning, I am Dr. Kilolo K. Ajanaku, National Executive Director for the World Conference of Mayors' Dr. Martin Luther King, JR American Dream Initiative. I submit this proposal on behalf of the current and longtime mayor of Tuskegee, Alabama, the Honorable Johnny Ford, JR, Founder of the World Conference of Mayors (WCM), who also serves as the Supreme Bishop of the New College of Bishops, Apostles and Associate Ministers, and National/International Operational Chairman of the Dr. Martin Luther King, JR American Dream Initiative. And while the WCM has been around since its founding in 1984, it has joined as a partner of this American Dream Initiative for the purpose of supporting new root-cause basic research that solves old problems.

I also bring greetings from our National Chairman, the Rev. Dr. W. Ronald Evans, President of the National Business League (Founded by Dr. Booker T. Washington in 1900), along with the head of our Basic Research Division, Dr. Nkosi K.M. Ajanaku, Esquire and Founder of the Future America Basic Research Institute.

We unite in congratulating you on your appointment by President Barack Obama to head the White House Task Force on 21st Century Policing. I bring you a proposal in this most important role, and although the magnitude of this proposal is novel, it ‘nips in the bud’ the long standing perceptual problems between police and African American boys and men, and it fits into the Vision, Prophecy, Mind, and Thinking of the Dream of Dr. Martin Luther King JR, who envisioned a beloved Nation where peace, prosperity, equality and freedom were the standard for all people regardless of their ethnic orientation!

The central idea is to introduce you to our Bio-psycho/Psychosocial Basic Research, which was developed by Mississippi native Dr. Nkosi Ajanaku (born Isaac Taylor), a 1969 graduate of Memphis State University (now University of Memphis) School of Law and the only African American in his graduating class. His basic research is new, but is as empirical as any science that humans have created. In fact, of all other social sciences--- Anthropology, Economics, History, Political Science, Psychology, Sociology and Criminology-- this new psychosocial science is the first to be rooted in the ideals of the American Creed. Importantly, it provides the sound grounding so sorely needed now as the culture of poverty, crime, run-down neighborhoods, irrelevant education curricula, and a dragging economy, poor health and many other malaises and actual powerlessness continue to plague us all.

Humaculture unveils that our longstanding social problems all extend from a culture that grew out of the nation's painful experience with plantation living (slavery). Our analysis tools make this so clear that one can see the patterns of behavior on a daily basis. Crime is an effect! It is one of the many branches of plantation living. The inability of the human being to make adjustments and get out of this situation/condition is what causes the branches of crime, poverty, racism and ineffective education. Humaculture puts the individual in position to plan a new life without such limits.

With Humaculture, we can nip crime in the bud and develop the natural security network that comes with people being alert 24/7 and naturally talking to each other. Humaculture removes the obstacles that keep us from being at the table and having scientifically-directed dialogue about how to use our resources to generate revenue streams that give children alternatives to making money through criminal activity.

At present, our inner city youth live in breeding grounds for international terrorist activity. Our communities are wide open for any who choose to infiltrate and take advantage of the cultural hatred and ignorance that stems from plantation living. Humaculture sets the table for the moves we must make for homeland security.

To surmount the obstacles, we have designed New Knowledge Forums as community teaching vehicles. These work best when put on in conjunction with partners who have influence and or authority in the communities. To quicken the spread of New Knowledge Forums, Future America has created a new tool called the Office of Innovation. This office

can be attached to any existing group, agency, government body, business, etc. It is the office through which New Knowledge Forums and other Humaculture teaching tools are extended without having to be fitted into existing social tools.

The Nation's problem with police and African American males has presented us the unique opportunity, through the taskforce, to provide President Obama with basic research tools through which he will be able to use all of the human and material resources at his disposal to finish President Lyndon Baines Johnson's effort to end poverty in America, in general, and in the African American Family, in particular! Solving the source of poverty was, after all, the direction that Dr. King was headed during his second journey to Washington, DC to introduce his Poor Peoples' Campaign, when he was diverted to Memphis and killed. This campaign was stimulated by the statement in his "I have a dream" speech when he said that the African American family lives on an island of poverty surrounded by a sea of prosperity!

Because this is the first research designed to get to the root cause of the problems of crime and its associated maladies of poverty, ethnic differences and hatred, all of which have their origin in the country's history of slavery, we recommend that an Office of Innovation be developed so that we can put the nation on a whole new course of peace, love, understanding and economic prosperity.

In conclusion, allow me to highlight the most important aspects of this proposal:

- It possesses the magnitude of novelty!
- A precise research solution that 'nips in the bud' the long standing perceptual problems between police and African American boys and men

- Its principles have received governmental and institutional support from several mayors, governors, universities, state and local governments.
- The first science to be rooted in the ideals of the American Creed.
- Provides an economic foundation for completing the War on Poverty and the Poor Peoples' Campaign.
- Uses an entrepreneurial and consumer-driven means for producing new ideas and new solutions to old problems.
- Sisterhood is a key component for implementation.
- All policy must demonstrate positive impact to children.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Kilolo K. Ajanaku".

Dr. Kilolo K. Ajanaku

National Executive Director

The President's Task Force on 21st Century Policing



Michael Bell, civilian advocate for Wisconsin ACT 348, along with Police Union leaders and families of people killed by police, shakes Governor Walker's hand upon signing April 23 2014.

Written Testimony Submitted for the Record by

Michael M. Bell,

Lt. Colonel USAF, retired

Father of Michael E. Bell, shot and killed by Kenosha WI Police, Nov 9 2004

February 23, 2015

Serving my country in what is ranked as the 3rd most dangerous job in the nation,ⁱ that of a pilot, I flew air operations in Iraq, Bosnia-Kosovo, and Afghanistan. In 2004, my 21-year-old unarmed son, was killed by a Kenosha, WI Police officer after a routine traffic stop. In 2014, following a decade of personal anguish, effort, and expense, I led a team that made Wisconsin the nation's first state to mandate external investigation of all police-related deaths. It is from this unique perspective, that of a military officer/pilot, a father of a man questionably killed by police and that of a successful advocate who worked with law enforcement to change status quo, that I provide this document.

The Death of Michael E. Bell

On Nov 9th 2004, my oldest son, returning home from a night out with friends, parked a car in front of his own home and a police officer drove up behind him. The officer made accusations without cause. Squad car dash-cam video shows the officer aggressively grabbing Michael, moving him off-camera and ordering a field sobriety test. Michael refuses, stating, "I know my rights," and two officers commence kicking, punching and tasing to arrest. With four officers now on the scene, and while Michael is held from behind in a bear hug, an officer mistakenly believes Michael has his gun and without confirmation, a 2nd officer places his gun directly to Michael's head, firing a deadly shot while Michael's mother and sister watch from 10 feet away. There were nine eye witnesses (5 civilian and 4 police).ⁱⁱ

Within two days, the Kenosha Police Department (roughly 200 officers serving a population of 100,000) investigated the shooting internally, held a self-created review board and, without full eyewitness statements, crime lab and medical examiner reports, declared the shooting justified.ⁱⁱⁱ The officers and their department coalesced around a single version of the shooting (their account was later proven to be patently false by forensic evidence and crime lab reports) and organically decided they had acted appropriately.

The department then submitted its report to the county District Attorney, who ruled two weeks later, that the shooting was justified. In 2010, the city of Kenosha settled a federal civil rights suit, initiated by our family, for \$1.75 million dollars. The settlement agreement allows all files to remain open.

Aftermath of the Shooting and Conflict of Interest

As a senior command pilot familiar with aviation accident investigations, I expected the investigation into my son's death to parallel that of USAF or NTSB Investigations (namely physiological testing of the crewmembers involved, external investigation of the debris site, and independent review of those findings to determine cause). It soon became evident that the core elements^{iv} of aviation mishap investigations were not occurring in the death of a civilian at the hands of a police officer.

The Kenosha County District Attorney, who worked daily with local law enforcement, demonstrated his close ties to the police department via numerous newspaper ads^v he placed, during his election campaign for circuit court judge. These advertisements ran simultaneously while he was reviewing another fatal shooting of a citizen in March of 2005. This shooting was the fourth police shooting by City of Kenosha police officers in 16 months^{vi}; all were ruled justified by the police department and District Attorney.^{vii} The District Attorney refused to allow inquests in all four deaths.

The only other mechanism for local review of police incidents was the city of Kenosha Police and Fire Commission. This panel was composed of 5 civilians, previously appointed by the mayor, without any experience in the complexities of investigating fatalities. Any decision rendered, especially in favor of my son and against the officers, would have had a direct impact on civil litigation pending against the same city the commission represents.

In an attempt to seek assistance relating to inappropriate investigation and review, I solicited a number of outside agencies and was ignored at all levels. These agencies / offices included the 2005 Wisconsin Office of Governor, the 2005 Office of the Wisconsin Attorney General, the Kenosha Branch of the Federal Bureau of Investigation and the 2005 U.S. Attorney for the Eastern District of Wisconsin. The Governor's office and the US Attorney even failed to acknowledge our written request for assistance. The WI Attorney General stated in a written response that they had no authority in the matter.

History of Shootings Ruled Justified

In an attempt to understand the complexity of the problem, I hired a qualified researcher to conduct a poll of national citizen review boards^{viii} and also identify historical data of police-related deaths in our state and across the US.

In Wisconsin, **our research looked at police-caused deaths dating back to 1885, (the year WI State Statute created civilian review) and were unable to find a single UNJUSTIFIED RULING by an inquest jury, a police department or a police and fire commission.**

This impossible record of perfection parallels trends reported in other states.^{ix}

Due to the complexity of gathering data from the beginning of the 20th century, (UNJUSTIFIED RULINGS may exist- we simply didn't find any) the limits of our budget were quickly exceeded. Research conducted by Milwaukee Journal Sentinel reporter Gina Barton confirmed that during the last 3 decades, all police shootings in Milwaukee County had been ruled justified by an inquest jury in Milwaukee.^x

Two police shootings, one in 1986^{xi} (officer sent to prison) and one in 2005 (originally ruled justified by the department and an inquest jury, officer committed suicide^{xii}) were found unjustified by a District Attorney. An additional shooting, originally ruled justified in 1958, was reversed by the District Attorney, after the partner of the officer involved gathered evidence and turned it over to prosecutors 20 years after the event.^{xiii}

It is my belief that the only credible, reliable source of state data relating to the number of deaths belongs to the police unions, as they provide legal advice in each member's shooting.

Privately funded independent tracking sources, such as KilledbyPolice.net and FatalEncounters.org, using a national search matrix of media reports about police-related deaths, have demonstrated that approximately three people per day are killed nationally by police officers.^{xiv}

Extreme Measures for Advocacy and the Death of an Officer

After the settlement and still unable to uncover the truth regarding my son's death, our family had to apply methods not within the means or courage of most families. In 2012, our family hired investigative consultants to review Michael's death. Based on testimony, forensics and evidence, these investigators theorized that Officer Erich Strausbaugh, who called out that my son "had his gun" (Michael's DN! or fingerprints were not found on any gun or holster) had hooked his holster on exposed control cables connected to the driver's side mirror. These details were not provided by police investigators.^{xv}

In addition, our family had to use TV commercials, radio ads, print ads (both statewide and national) and highway billboards to attract attention to the flawed process. It was our intent to demonstrate that self-investigation and self-review were affecting community/law enforcement relationships. Print ads were run in national newspapers USA TODAY and the New York Times, and TV ads were run regionally on NFL and MLB games. During one period, 43 full-sized billboards were leased along major Milwaukee highways. Investigations and advertising were financed by our family, at costs ranging from \$850,000 to \$1,000,000.

Sadly, on Oct. 31 2010, Officer Strausbaugh, the officer who claimed “he (Michael) has my gun,” committed suicide.^{xvi} The officer who shot my son remains on the Kenosha force. No officer has ever been charged in the death, and an 1100-page federal complaint relating to the patterns and practice of the department involved, paid for by our family, remains open with the 2015 US Attorney in Eastern Wisconsin.^{xvii}

Assembly Bill 409

In late 2012, two sets of important meetings occurred. First, I met with state legislators Garey Bies (R) and Chris Taylor (D). Second, I met with union leaders of the Wisconsin Professional Police Association and the Badger State Sheriff’s association. We discussed a bi-partisan bill that mirrored core elements of aviation mishap investigations. AB 409 was drafted and its core elements were:

- Test officer physiology immediately following the use of deadly force to insure that decisions to use deadly force were not influenced by alcohol, mood-enhancing drugs or affected by steroids.
- Externally collect evidence and conduct an investigation of a citizen’s death by qualified outside investigators.
- Have results of the investigation independently reviewed by a panel of legal professionals (not just law enforcement).

During the legislative process, the original bill was stripped of the 1st and 3rd elements, while the portion pertaining to external investigation was modified. Following unanimous votes in both the Assembly and Senate, Governor Walker signed AB 409 into law in April of 2014. At this time, legislation is being drafted to secure passage of these previously stripped elements.

Recommendations

Based on the historical, overwhelming success of the aviation industry in reducing fatal accidents,^{xviii} it is my strong belief that officer safety, citizen safety and mutual trust can be improved with federal help and state mandates. I hereby submit the following recommendations to this Task Force for consideration.

1. Mandate Data Collection at the Federal Level.

In aviation investigations, once the cause of an accident is determined by the safety board, that information is distributed throughout the community to reduce the chances of it happening again. Since 1962, the NTSB aviation accident database has stored data on all civil aviation accidents and selected incidents within its jurisdiction. Similar data relating to police officers’ use of deadly force needs to be collected. Legislative and training solutions can only occur if we are confident in, and aware of, the trends.

2. Federally Support and/or Establish a Discreet Safety and Ethics Reporting System.

In aviation, there is an established system for responsible professionals to disclose information that s/he reasonably believes is evidence of mismanagement leading to a substantial and specific danger to public health and safety. The Aviation Safety Reporting System is a non-punitive program for anonymously reporting unsafe activities. The ASRS program is operated by NASA, which collects and analyzes reports, then forwards findings to the FAA. This ensures no pilot or mechanic is identified by the FAA and subjected to retribution by employers or colleagues. Police need to develop an equivalent system, thus allowing any officer to report on safety and ethics concerns without fear of retribution.

3. Federally Support Recording Devices to Capture Data at the Time of Death.

The early version of the body camera—the dashboard camera—has proved useful in documenting police interactions and factors at the time of an incident, yet officers weren't initially keen on the idea. Many came to accept "dash cams" as beneficial to police operations, and generations of new recruits have accepted them as a standard feature of the job. Like a jetliner's flight data recorder or "Black Box", "body cams" or "gun cams" will improve the recording of data relating to police-involved fatalities. A systemic change dedicated to saving lives will occur, when all collected data and their subsequent review mirror the methods developed by the aviation industry.

4. Promote Best Practice Reforms at Statewide Levels, to include:

A. Support "Clear Frame of Mind" when deadly force is used.

We have given law enforcement officers the immense power of life and death. Let's make sure that alcohol, pain killers, mood-enhancing drugs or steroids are not a factor in a decision to use deadly force. Just as commercial pilots and DOT-licensed drivers are tested in a mishap, the public needs to be assured that the above factors did not play a role in the use of deadly force. Employment hiring mandates and/or city insurance policy requirements may be a source for this reform.

B. Conduct External Professional Investigations of Police Related Deaths.

Internal organizational reviews conducted by law enforcement agencies relating to their own use-of-force introduce the natural bias of camaraderie, which naturally leads to flawed conclusions. Aviation learned decades ago that external professional investigations of an aircraft crash were essential. Mishap teams were formed by the USAF, and Go Teams were established by the NTSB. Commercial air carriers and military flight squadrons are not allowed to investigate themselves. Police officers should be held to a similar standard and not be exempt from external investigation, either.

C. Create Regional Critical Incident Review Boards of legal-system professionals (not just law enforcement)

There is merit in having members of any profession critically review one another's work. Their work entails difficult discretionary decision-making, and only those similarly schooled and practiced in that decision-making can properly judge its exercise by others. ***This is precisely what is wrong with most citizen review boards.*** Police "professionals" need to review "law enforcement" from a distance. Reviewers must be skilled in and knowledgeable about policing, but they must not have an institutional or personal stake (eg., a lost promotion opportunity) in the process. Recently retired police chiefs or sheriffs, criminal justice or law professors, police/academy trainers, former prosecutors or judges provide the right balance between professional familiarity and independence to review incidents of police-related deaths of a civilian. Just as we won't allow an airline company to pick and choose who will be on the NTSB, we shouldn't allow a police department to select who sits on its review panel. A high-ranking elected official, who does not directly oversee the agency being reviewed, must appoint the members of this independent review panel.

D. Hold Officers Responsible for Deviations from Training or Irresponsible Behavior.

Imagine the uproar, if passengers were killed by poorly trained, drunk or irresponsible pilots, who simply got a new job, after they'd botched the previous one. If you are trained to avoid thunderstorms and fly into one, you are held accountable. Military pilots go before a Flight Evaluation Board, and the Federal Aviation Administration can and, most importantly, *will* suspend a pilot's license, require additional

training or fine the airline company when a pilot is found responsible for an accident. One at-fault accident and your chances of being hired by another national carrier are close to zero.

Officers need to recognize that when people are in emotional crisis, they must be handled in accordance with policy and special training. If the officer kills someone without cause, that officer will be held accountable. For example, Milwaukee Police Chief Edward Flynn demonstrated such accountability by firing an officer, after the officer did not follow specific protocols—taught by his department in the handling of mentally ill citizens—that resulted in a person being shot to death.

Conclusion

Worldwide, the commercial and military aviation profession operates in hostile environments. Each mountain, thunderstorm, bird, mechanical malfunction or human (whether a passenger or an enemy on the ground) may present a threat to pilots. When threats appear, they happen quickly and are often deadly. Proper pre-knowledge of these hazards can only be learned through the study of past mistakes and must be taught to those entering the profession. The modern aviation culture was shaped by constant refinement.

It is my belief that, due to law enforcement's failure of the six core elements of investigation and review, ***a national crisis exists***. In my own son's case, an officer escalated a routine scenario and, during the course of an ensuing struggle, had simply made a "mistake of fact" observation. In error, he called out that an innocent young man had the officer's weapon, causing another officer to take my son's life. The lack of an objective investigation and an independent review created an atmosphere in which an honest mistake was purposely hidden by a system lacking checks and balances, leading to the suicide of an officer. Now two tragedies exist and all families suffer.

Solid, unbiased investigations, scrutinized by independent review, produce conclusions that, when properly dispersed, will shape culture, training and loss of life for years to come. These time-proven practices point the way forward and must be adopted by law enforcement for both the officer and the community.

End Notes

ⁱ Bureau of Labor Statistics, National Census of Fatal Occupational Injuries Rates. Retrieved from <http://www.bls.gov/news.release/pdf/cfoi.pdf> on February 14, 2015

ⁱⁱ Detailed information about this incident can be found in the file of the following case: United States District Court, Eastern District of Wisconsin, Estate of Michael Edward Bell et. al. vs. Officer Erich Strausbaugh, et. al. Civil Action No. 05-C-1176. Many of the documents in this file can be found at <http://michaelbell.info/>

ⁱⁱⁱ Hansen, Jessica. Police Shooting Justified. *Kenosha News*. (2004, November 12)

^{iv} Bell, Michael. How we can end 'Cop Hunting'. *Politico* (2014, December 22) Retrieved from <http://www.politico.com/magazine/story/2014/12/how-to-stop-cop-hunting-113742.html#.VJo0FyNMCg>

^v *Kenosha News* print advertisements authorized and paid for by Friends of Bob Jambois (2005 April 1-4)

See Ad next Page

Twin Lakes chief endorses Jambois

In my 34 years in law enforcement, I have developed a sincere appreciation and respect for individuals that dedicate their lives to our nation's judicial systems, and who uphold the professionalism those systems require. Robert Jambois is one of those individuals. The Kenosha County's District Attorney's office, under the direction of Mr. Jambois, has held those of us in law enforcement to the highest of standards of professionalism and integrity, and yet has worked diligently to prosecute those who are a threat to the safety and security of all residents of Kenosha County.

Because of these factors, I endorse Robert Jambois for the candidate of Kenosha Circuit Court judge.

Chief Robert O'Hallen
Twin Lakes Police
Department

April 2nd 2005



Bob Jambois

justice system experience matters

MORE EXPERIENCE:

- Certified by prestigious National Board of Trial Advocacy as Criminal Trial Specialist.
- Administers largest law office in Kenosha County since 1989— District Attorney's Office
- Tried hundreds of jury trials—more than 50 since 1996

KEEPS KENOSHA SAFE:

- Worked with Sen. Joe Andrea to toughen Wisconsin's laws against repeat drunk drivers—dubbed the "Jambois Law"
- Worked with Senator Bob Wirth on the Truth in Sentencing bill.
- Implemented domestic abuse intervention program into Municipal Court to reduce the incidence of domestic abuse.

SAVES TAXPAYER'S MONEY:

- Established shared special prosecutions with other District Attorney offices. Kenosha County residents saved \$125,000 1st year—spent \$0 since.
- Designed Transitions Team to bring children placed out of home back home sooner. First full year saved Kenosha County taxpayers \$800,000.

For more accomplishments visit:

www.bobjambois.com

"As Judge I will continue to do the best job I can to serve this community by keeping it safe and conserving taxpayer money. I will be fair, attentive, and unbiased hearing."

April 1st -4th 2005

BOB JAMBOIS ENDORSED BY:

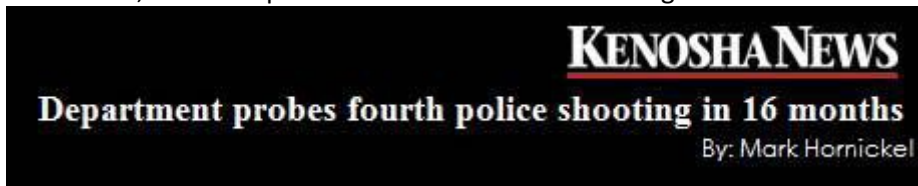
- AFL-CIO
- UAW Local 72
- Kenosha Professional Police Association
- Dan Wade, Chief of Police, City of Kenosha
- Daniel Kingsley, Chief of Police, Silver Lake
- Robert O'Hallen, Chief of Police, Twin Lakes
- Allen Kehl, Kenosha County Executive

Opponent:

- Part time Somers Municipal Judge (2 less than 40 hours)
- No jury trials
- Non-lawyers as municipal judge
- No criminal, or traffic cases
- Municipal Court once a month
- One of a dozen occasionally called as Court Commissioner half days in 2004, days in 2003 (less than 40 hours a year)
- Part-time Assistant Counsel
- Tried two jury trials 1996 (criminal defense) since then
- Part time solo

When our
is at st
experience
Vote Bob J.
for Circuit
Judge
Tuesday

^{vi} Hornickel, Mark. Department Probes 4 Police Shootings in 16 Months. *Kenosha News*. (2005 March 30)



^{vii} Jones, Meg. DA clears Kenosha officer in shooting. *Milwaukee Journal Sentinel*. (2005, April 5)



^{viii} Six cities were selected from a group of 120 cities with civilian review, ombudsman or police monitors. Boise ID, Chandler AZ, Eugene OR, San Diego CA, Cincinnati OH, Las Vegas NV were selected (2013, April) Data can be found at : <https://drive.google.com/folderview?id=0B6SnSBw-2l60SDFWdzlIZmRRcE0&usp=sharing>

^{ix} Turkel, Tux. When Police pull the trigger in crisis. *Portland Press Herald* (2012, December 8) Retrieved from: <http://www.pressherald.com/2012/12/08/shoot-maine-misfiring-on-deadly-force/>

Also see

Mower, Lawrence, Maimon Alan & Haynes, Brian. When Las Vegas Police Shoot, and Kill. Part 1 Always Justified. *Las Vegas Review Journal*. (2011, November 27) Retrieved from: <http://www.reviewjournal.com/news/deadly-force>

^x Barton, Gina. In 25 years, No Charges recommended in Milwaukee Inquests. *Milwaukee Journal Sentinel*. (2012, October 6) Retrieved from <http://www.jsonline.com/watchdog/watchdogreports/25-years-no-charges-recommended-in-milwaukee-inquests-d0742c8-172994381.html>

^{xi} Rex, Peter. Cop charged in killing of Drug Suspect. *Chicago Tribune* (1986, September 16) http://articles.chicagotribune.com/1986-09-18/news/8603090860_1_shanks-revolver-and-shot-police-officer

^{xii} <http://caselaw.findlaw.com/us-7th-circuit/1595766.html>

^{xiii} Barton, Gina. Daniel Bell police death case resonates 50 years later. *Milwaukee Journal Sentinel* (2013, May 27) Retrieved from <http://www.jsonline.com/news/milwaukee/daniel-bell-police-death-case-still-resonates-50-years-later-b9918714z1-209115771.html>

^{xiv} At least 131 people have been killed by U.S. police since January 1, 2015. At least 1,102 were killed in 2014. <http://killedbypolice.net/>

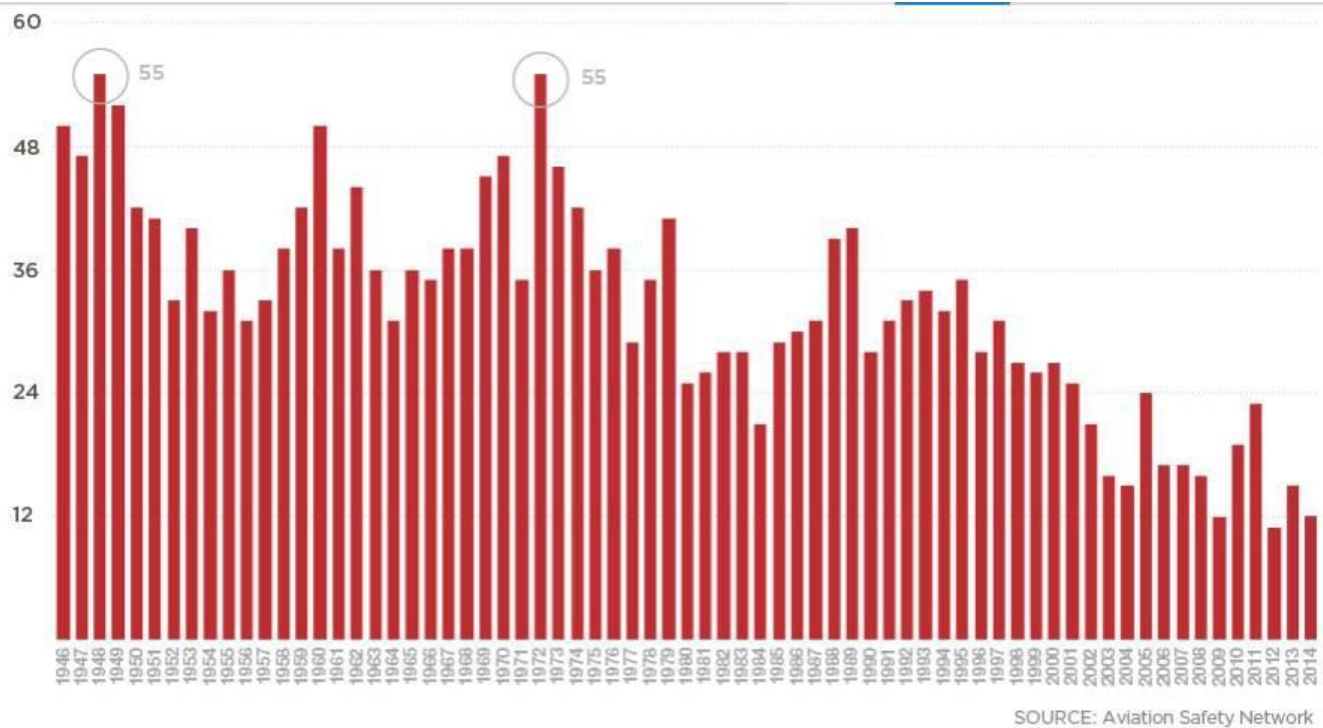
^{xv} Beckman, Russell. Affidavit of Russell Beckman Regarding the Circumstances Surrounding the Possession of the Hand Gun of Officer Erich Strausbaugh During the Encounter with Michael E. Bell. (2012, November 20) This affidavit was filed with the FBI and the U.S. Attorney for the Eastern District of Wisconsin on November 27, 2012. A copy of this affidavit can be retrieved from <http://michaelbell.info/Evidence.html>

^{xvi} Barton, Gina. Officer in shooting commits suicide. *Milwaukee Journal Sentinel*. (2010, November 1) Retrieved from: <http://www.jsonline.com/news/wisconsin/106478678.html>

^{xvii} I personally met with the United States Attorney for the Eastern District of Wisconsin, James Santelle on November 4th 2014. He confirmed this information.

^{xviii} <http://www.cnn.com/interactive/2014/07/travel/aviation-data/>

Global Commercial Crashes since 1946



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Written Testimony of Mr. Steven Brown,
Journalist & Public Relations Consultant
1201 Fox Trail
Washington IL 61571

About four months before the shooting of Michael Brown in Ferguson Missouri, police less than 15 miles down I-70 in St. Charles shot another man named Brown. The event barely drew any attention from the media or anyone except immediate family and friends.

St. Charles police were called to a home on Clark Court about 9 p.m. on April 16. One call came from the man's wife. She stated he was in need of a mental health evaluation. Another caller said the man was shooting fireworks and disturbing the neighbors. Police were told there were no weapons in the St. Charles man's house. The fireworks complainant said, however, that the Brown had a "belligerent attitude and was pointing what looked like a large pistol."

Within seven minutes of their arrival on the scene, one officer fired a failed Taser. Another repeatedly told Brown to drop the object in his hand and did not attempt a Taser shot. A third officer issued the same command, but did not fire a Taser. Less than three minutes after arriving on the scene, he had fired his SigSauer P226 nine times, and he was on the radio requesting an ambulance.

Martin Brown, 52, was pronounced dead at a nearby hospital.

The object in his hand was a Marksman Repeater BB gun. Officer Mike Davis signed a report that stated Martin Brown was attempting "suicide by cop". Officer Mark Lane, in a signed statement, reported that he felt immediately in fear for his life. Unlike the other officers at the shooting, Officer Lane was never questioned or taped concerning the shooting.

The questionable use of lethal force was the subject of Assistant St. Charles Prosecuting Attorney Carrie Barth's thirty six(36) word report released in September, 2014. The report stated Officer Lane's action was appropriate.

Besides paid administrative leave, there is no record of any disciplinary action, major medical treatment or retraining for Officer Lane.

Martin Brown was a brother, husband, father and grandfather. His family stated he had a series of health problems in recent years. He had been drinking before the shooting. The medical examiner's autopsy showed a blood alcohol level of 2.0, but no evidence of other drugs. St Charles Police provided no records or reports of additional police incidents involving Brown.

At the very outset of this account, it is important to state my personal respect for police. This respect was gained in part from training and service as a military policeman in the Illinois National Guard. The service came along side many full time police officers and a number of federal agents.

Nevertheless, the St. Charles County Prosecuting Attorney declined to offer any detailed explanation of Assistant Barth's actual course of action besides the summary memo. Most importantly, the office declined to state if Barth knew Lane had shot and killed another Missourian with health problems in 2006. At that shooting, St. Charles County Prosecuting Attorney John P. "Jack" Banās concluded that questionable use of lethal force was appropriate.

There is no video or audio record of the 2014 shooting. St Charles police cars are equipped with video cameras, but the gear shuts down when emergency lights and sirens are off.

Eyewitness accounts state the officers used great restraint during their seven-minute encounter with Brown. There is no indication Brown posed any threat to neighbors. The officers appear to have been at least 30 feet from Brown during the incident according to a crude diagram of the scene. Officer Lane appears to have been shielded by his Tahoe squad car and more than 30 feet away.

St. Charles police or city officials have offered no explanation as why Officer Lane did not comply with the provisions of U.S. Supreme Court decision in Tennessee V. Garner that held deadly force can only be used to affect an arrest or prevent an escape. They have no explanation why Lane and another officer at the scene did not fire a Taser as Davis did.

While the August shooting of Michael Brown triggered protests in Ferguson and beyond, the April shooting of Martin Brown has not.

Martin Brown was white. There is no indication race played any role in Martin Brown's shooting.

A national debate has arisen since the shootings. Police conduct has come into question. There is more interest in requiring officers to wear video cameras in order to keep a record of their incidents.

There is also more interest in better reporting of shooting incidents involving police.

There is focus on police tactics and the elements that create these violent incidents.

Referred to as "police created urgency," the National Association for Civilian Oversight of Law Enforcement questions how departments evaluate situations where no death would have occurred but for the officer's decisions.

Had the now retired Ferguson police officer Darren Wilson not opted to create close contact to enforce jay walking or awaited back-up support when the jay walker became belligerent some might conclude no death would have occurred.

Had St. Charles police fired additional Tasers or sought a mental health professional to negotiate – rather employing questionable use of lethal force in three minutes – some might conclude no death would have occurred.

The decision to share this incident in the context of the national debate was not made in haste. It seems worthwhile because it represents another type of questionable use of lethal force that is not embroiled in subsequent violent acts that have dominated considerable media attention. Those subsequent acts seem to impact any discussion or review of police conduct which is the actual core of these two issues.

Can police be trained to rethink their initial reactions in real time situations to evaluate options or employ less lethal alternatives?

Can those evaluations be done without putting officers in additional risk? That is a very important question. Police are trained to be wary of what might seem relatively safe events. Routine traffic stops and response to domestic disputes have consistently been found to be the types of calls that see the most incidents of injury to police.

Some can point to the increasing use of video tape in prisoner interrogation as a calming element that has led to fewer charges of violence-induced confessions. Some experts think police conduct or over reaction could be calmed with the awareness a video record. This applies to offenders as well.

Can every episode of questionable use lethal force be prevented? Probably not. But it seems like a worthwhile exercise to see if steps can be taken to address incidents witnessed in recent months.

(Steven Brown has worked as an award winning journalist and public relations consultant for more than 40 years. He grew up in St. Louis and resides in Illinois. Martin Brown is his brother.)

3261 Chaparral Way
Lithonia, Georgia 30038
9 January 2015

VIA EMAIL

Mr. Charles Ramsey
Ms. Laurie Robinson
Co-Chairpersons
Presidential Task Force
on 21st Century Policing
145 N Street NE
Washington, DC

Dear Mr. Ramsey and Ms. Robinson:

Thank you for this opportunity to present my position on various issues concerning 21st Century Policing. It is an honor to be selected for such a prestigious undertaking. By way of background, I am a retired (2002) Atlanta Police Sergeant with over 22 years of service. Since my retirement I have worked with community based, civil and human rights organizations on issues concerning policing. I have also worked for a Member of Congress. There is a strong need for a concise examination of the current status of policing, especially with regard to its interactions with ethnic groups.

Attached is my paper in support of a National Police Oversight Agency. This Oversight Agency would be responsible for the investigation and prosecution of cases such as Michael Brown, Eric Garner and Oscar Grant. It would also be responsible for maintaining statistical data on such things as in custody deaths, racial and ethnic civilian encounters with police, and other pertinent information. I truly believe such an agency is necessary if this country is to adequately address the issues of police excessive force, especially involving deaths of unarmed civilians. I recognize your Task Force is winding down and the report is due to President Obama next week. However, I do hope you can find to review this document and consider it for inclusion in your final report.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

Faye Coffield

**THE NEED FOR A
NATIONAL POLICE OVERSIGHT AGENCY**

**Presented to
THE PRESIDENTIAL TASK FORCE ON 21ST CENTURY POLICING**

**Prepared by
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THE NATIONAL POLICE OVERSIGHT AGENCY

NEED:

There can be no argument allegations of excessive police use of force, including the deaths of unarmed citizens, has become a national concern. Within the past year, we have witnessed demonstrations regarding perceived police abuses in major cities. Unlike past demonstrations, the participants in the currents are from all racial, ethnic, social, economic and educational background. These concerns reached a level where President Obama created this Presidential Task Force on 21st Century to investigate and develop solutions. However, this is not the first time such a federal investigation has taken place. After each of the riots of the 1960s there were investigations into the relationship between the police and the Black community

The most famous of these is The McCone Commission which investigated the 1965 Watts Riots.¹ In pertinent part, the McCone Commission concluded:

"An examination of seven riots in northern cities of the United States in 1964 reveals that each one was started over a police incident...on the one hand, we call for a better understanding by the law enforcement agencies of Negro community attitudes and, on the other hand, a more widespread understanding within the Negro community of the value of the police and the extent to which the law enforcement agencies provide it with security. ...The bitter criticism we have heard evidences a deep and longstanding schism between a substantial portion of the Negro community and the Police Department. "Police brutality" has been the recurring charge. One witness after another has recounted instances in which, in their opinion, the police have used excessive force or have been disrespectful and abusive in their language or manner.*...²

The McCone Commission Report is almost 50 years old. Yet the words of the Commission ring true today. Ironically much of the recommendations of the Commission were never seriously enacted. We cannot afford to wait another 50 years or experience the violent and destructive riots of the 1960s before action is taken to improve not only police community relationships, but the manner in which policing is conducted in this country.

There is a valid need for a federal police oversight agency tasked with the ability to investigate and prosecute nationally in matters of excessive force matters. The agency should be responsible for the collection and evaluation of statistical data concerning use of force, complaints of excessive force, in custody deaths and other information deemed pertinent to determining racial and ethnic interactions within police departments. Most importantly, this police oversight agency must be self contained and separate from other federal law enforcement agencies. It must have its own Director, prosecutors, investigations and support staff. It should be at a level no more than two levels below direct reporting to the President of the United States.

¹ <http://www.usc.edu/libraries/archives/cityinstress/mccone/contents.html>

² <http://www.usc.edu/libraries/archives/cityinstress/mccone/part5.html>

BACKGROUND

On March 3, 1991, motorist Rodney King engaged Los Angeles Police Department in a high speed chase through the San Fernando Valley area. Once his vehicle was stopped King and the passenger were beaten by LAPD officers. A nearby resident, George Holliday, stepped onto his balcony and began to film the beating of Rodney King and his passenger. To this day, the Rodney King beating and Holliday's video are the basis of many outcries of continuing police misconduct. Eventually, four of the officers were charged by the District Attorney with excessive force. The initial trial in predominantly white Simi Valley ended on April 29, 1992 with acquittals of three and the inability to reach a decision on one. On May 7, 1992 a federal grand jury began hearing evidence for possible federal civil rights charges. On August 4, 1992 a federal grand jury indicted four officers on civil rights violations. In 1993 two of the four were convicted and two were acquitted. The two convicted, Sgt. Stacey Koon and Officer Laurence Powell, were sentenced to 30 months in federal custody. As a side note, Federal Judge John Davies, "...accepted much of the defense version of the beating. He strongly criticized King, ... Davies made several findings in support of the officers' version of events ..."³

I have spent much of this paper detailing the events of the Rodney King matter. However, I believe any discussion of police brutality, the court prosecution of police officers in misconduct matters and police body cameras should include the King matter as all of these elements are present in it. Prior to the King beating, there were allegations of systematic abuse against minorities by LAPD. The King video pulled back the covers on LAPD and allegations of rampant abuse.

In another incident, on January 1, 2009, San Francisco Bay Area Rapid Transit (BART) rookie Officer Johannes Mehserle fatally wounded Oscar Grant III, a 21 year old Black male. Grant was laying face down on an Oakland subway platform when Mehserle pulled his service revolver and shot Grant in the back. Mehserle immediately told investigators he was attempting to pull his taser when he mistakenly pulled his service weapon and fired. The shoot of Grant was captured on video by several bystanders from a few minutes before until afterwards. Mehserle was eventually tried on charges of various murder and manslaughter offenses. He was eventually convicted of involuntary manslaughter and sentenced to two years. Officer Mehserle serve approximately six months of his sentence before being released on parole. The Grant shooting and Mehserle's involuntary manslaughter conviction resulted in violent demonstrations in the Oakland and surrounding area.⁴

Lastly, in July 2014 Eric Garner, a Black 43 year old alleged street vendor of untaxed individual cigarette, was confronted on a Staten Island street by a specialized team from NYPD. The group of officers attempted to subdue Garner. Eventually the group of approximately five (5) officer took Mr. Garner to the ground. This take down

³ http://en.wikipedia.org/wiki/Rodney_King

⁴ http://en.wikipedia.org/wiki/BART_Police_shooting_of_Oscar_Grant

included one officer placing his hand under the chin of Mr. Garner and pushing up. The officers then piled onto Mr. Garner in an effort to “restrain” him. Almost immediately he stated he could not breathe and lapsed into unconsciousness. He laid on the ground for several minutes without any medical aid from the officers. As in the 1991 Rodney King beating, the entire matter was captured on video tape which was almost immediately released to the media and various social media sites.⁵ Later, the Coroner ruled the death a homicide by choking. The matter was taken before a Grand Jury who refused to indict the officer involved.

This Writer believes police body cameras are an important tool. Not only do they show the incident from the officer’s perspective, they document movements and language of the all. Yet as demonstrated by the incidents above, the presence of clear and unrefuted video evidence does not always lead to a conviction. In the Oscar Grant case, the Officer was charged with various offenses but he was later convicted of involuntary manslaughter and sentenced to two years of which he served approximately 11 months. Many believe he was “sacrificed” because of his rookie status. In Rodney King and Eric Garner cases, the officers were either initially acquitted or the grand jury refused to indict them.

This troubling public perception problem is that even when video evidence is presented, officers will overwhelmingly not be charged in the deaths of civilians cannot be resolved by body cameras. And the public may not be wrong in their perception. In the recent grand jury investigation into the death of Michael Brown, an unarmed 18 year old Ferguson, Missouri resident. there was allegations of improper conduct from the District Attorney. It was alleged the District Attorney deliberately withheld information and failed to accurately present information unfavorable to the officer resulting in no indictment and was generally lackadaisical.

There is a troubling relationship between the police, prosecutors and to some extent Judges. These relationships often reaches into state level investigative and prosecutorial agencies. The duty of the police is basically to gather information and forward it to the appropriate prosecutorial agency for adjudication. In the adjudication process, the police and prosecutors must work closely. In many cases it is the testimony and evidence gathered by the police that results in a conviction. Often police and prosecutorial staff work together from the inception of a case, such as vice offenses, until its final adjudication. The closeness and dependency of the prosecutors upon the assistance of the police is often too close for their to be, except in areas of corruption, a bias in favor of police. There may be squabbles, but in the end they are family.

One must ask what is the solution. The answer is complexed and simplistic at the same time. There must be a federal level police oversight agency whose purpose is to insure unbiased investigation and, if necessary, prosecution of cases involving

⁵ <http://www.theguardian.com/us-news/video/2014/dec/04/i-cant-breathe-eric-garner-chokehold-death-video>

the deaths and/or serious injury of unarmed citizens at the hands of the police. Additionally, this agency must be, at a minimum, the record keeper of information concerning use of force, in custody deaths, racial statistics and other pertinent information.

THE NATIONAL POLICE OVERSIGHT AGENCY

The constraints of this paper does not allow for a detailed examination of the proposed National Police Oversight Agency. Therefore, I will limited it to existing programs through the world. The United States is among the few democratic nations which does not have a national agency to manage police specific police abuse complaints, in custody death, racial interaction and other statistics. Much of this lack of a national agency is due to the fact there is not a national police agency in the United States. However, the fact there is no national police force, does not excuse the United States from implementing a national oversight agency.

In the the United Kingdom, there has been national oversight for decades. It explains its purpose and duties as follows:

“The current system of holding the 43 forces of England and Wales accountable has been characterised as ‘the tripartite structure of police accountability’. Established under the 1964 Police Act, ..this remains the fundamental basis of police governance. The tripartite system distributes responsibilities between the Home Office, the local police authority, and the chief constable of the force. Legislation since the 1964 Police Act, including the 1994 Police and Magistratesí Courts Act (PMCA), the Police Act 1996, and the Police Reform Act 2002, has endorsed the tripartite arrangements,.... This tripartite system provides accountability to Parliament through the Home Secretary (who has responsibility for policing policy including centrally set ‘key priorities’ that are formalised within a National Policing Plan). It also provides accountability to local populations through the local police authorities, which comprise of elected local councillors, magistrates and business representatives nominated by a central panel. In practice chief constables also respond to policies and circulars set by the executive (the Home Office and Her Majestyís Chief Inspector of Constabulary). The autonomy of chief constables is arguably limited by the current arrangements, although case-law has made it clear that the police are the servants of the law in terms of their operational discretion, and are not subject to administrative or political direction in this respect....”⁶

The United Kingdom’s policing is close to that that of the United States. In fact, much of US policing is based upon the police practices in England as established in the 19th Century. However, countries as diverse as Kenya⁷ and Norway have some form of national oversight of police. The program which I believe best illustrate a workable program for the United States is that of Norway.

⁶ http://www.humanrightsinitiative.org/programs/aj/police/res_mat/police_accountability_in_uk.pdf

⁷

http://www.humanrightsinitiative.org/publications/police/CHRI%20and%20RPP%20Guide%20to%20the%20new%20Kenya%20Police%20Laws_Final.pdf

The Norwegian system explains its purpose and duties as follows:

“...By virtue of its duties, the Police have a variety of instruments of power. Without adequate control of the use of these instruments of power, the right to use force could become a threat to legal protection and democracy. Most western States today have special procedures for investigating incidents involving members of the police and prosecuting services.

When the police are accused of criminal acts or someone dies or is seriously injured as a result of the police or prosecuting authorities exercising their official duties, or someone dies or is seriously injured while in police custody, it is necessary to safeguard:

- the right for involved persons to be heard
- public confidence in the procedures concerning such situations
- national stability
- fundamental rights for citizens and police officers involved

In a number of judgments, the European Court of Human Rights has stated that when individuals die as a result of the exercising of official duties (read: the Police's) – there is a social requirement for investigation:

- mandatory
- independent
- effective, transparent and adequate prompt
- transparency for next of kin and the public

Propositin no. 96 (2002 – 2003) to the Odelsting on amendments to the Criminal Procedure Act (establishment of a special investigative body for the police and prosecuting authorities) states that the Norwegian Bureau shall ensure:

- legal protection and equal treatment for a person reporting police officers
- legal protection and equal treatment for members of the police and prosecuting service being reported
- independence
- public trust
- wider public access and better information
- professional investigative competence

The main tasks of the Norwegian Bureau is to investigate and decide whether or not to prosecute cases concerning suspicion of criminal acts committed by employees in the police force and prosecuting authority....”⁸

CONCLUSION:

While policing has made some improvements since the 1966 McCone Commission Report, there still remains much work to be done. There can be no effective change without an independent National Police Oversight Committee to not only monitor, but review, investigation and, when necessary, prosecute. Until such time as we are willing to create such national oversight we will continue to see the friction because of incidents like the Rodney King, Oscar Grant, Eric Garner and Michael Brown incident and the responses, violent and nonviolent protest thereto.

⁸ Norwegian Bureau For The Investigation of Police Affairs
<http://www.spesialenheten.no/Information/Aboutus/tabid/6015/Default.aspx>



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February 23, 2015

President's Task Force on Policing in the 21st Century
Office of Community Oriented Policing Services
U.S. Department of Justice
145 N Street NE, 11th Floor
Washington, DC 20530

Dear Chairperson Ramsey, Chairperson Robinson, and Task Force Members:

Thank you for this opportunity to add our voice to the important work of the Task Force. We submit this final letter as “general comments” on the mission and work of the Task Force and not in response to a listening session topic as we have done on two previous occasions.

The Innocence Project is a national litigation and public policy organization dedicated to exonerating wrongfully convicted individuals through DNA testing and reforming the criminal justice system to prevent future injustices. By these comments, we hope to draw the Task Force’s attention to an important challenge facing law enforcement that was not directly addressed by any of the previous listening sessions: the central role that science plays in the integrity of convictions.

The important role of forensic evidence in policing is undisputed. Law enforcement has long relied upon the forensic science disciplines to produce valuable evidence that has led to the arrest and conviction of the guilty. Starting in the late 1980s, DNA analysis, the gold standard of the forensic disciplines, has also been central to exonerating the innocent. To date, 325 innocent people have been freed based on post-conviction DNA evidence. Importantly, in almost half of these DNA exonerations, the reliance on unreliable or unvalidated forensic science actually contributed to the wrongful conviction. In other words, the forensic technique used to prove guilt was subsequently proven wrong by DNA testing. As we noted in our first letter, dated January 9, 2015, every wrongful conviction erodes the community trust in the justice system – and it starts with the police. Getting it right matters: to individuals, families, victims, and the public. We urge you to learn from the tragic lessons of wrongful convictions and to insist on the very best science for use by police and in the criminal justice system at large. Nothing less should be acceptable.



Reliance on Unvalidated Forensic Sciences Leads to Wrongful Convictions

The term “forensic science” refers to a broad range of disciplines that includes, among others, nuclear DNA analysis, toxicology, and the pattern matching disciplines (i.e. the comparison of fingerprints, toolmarks, bitemarks, handwriting, and hair). These techniques are used by law enforcement to “match” a piece of physical or biological evidence to a particular individual. However, with the exception of nuclear DNA testing, which was developed through extensive scientific research at top academic centers, many other forensic techniques developed by law enforcement to aid investigations have not been subjected to sufficient scientific evaluation.

And we now know from the collected experience of the DNA exonerations that more research is needed to demonstrate the validity and reliability of many of these techniques. For example, forensics played a central role in the 1989 conviction of Steven Barnes, who was convicted of rape and murder in upstate New York and served 20 years for a crime he did not commit. Barnes was convicted based upon three types of unvalidated forensic evidence: fabric print analysis, hair comparison analysis, and soil comparison. A criminalist from the Connecticut State Police Forensic Laboratory testified that based on a photographic overlay of fabric from the victim’s jeans and an imprint on Barnes’ truck that the two patterns were similar; that two hairs collected from Barnes’ truck were microscopically similar to the victim’s hairs and dissimilar to Barnes’ hair, and that soil samples taken from the truck had similar characteristics to dirt samples taken from the scene. The probative value of these comparison techniques have not yet been validated scientifically (the commonality or rarity of a feature, the criteria for determining whether something is similar or dissimilar, etc.). And in fact, in 2007, DNA testing on other crime scene evidence yielded conclusive results that Steven Barnes was innocent.

Since experts agree that only 5-10% of a crime lab’s work involves DNA testing and that they overwhelmingly rely on other forensic disciplines, it is all the more imperative that these other disciplines be subjected to rigorous evaluation to ensure their validity. When studied, we discover that some of these disciplines do not stand up to rigorous review. In 2005, the FBI stopped using the technique known as “composite bullet lead analysis” after it was found that the method could not be used to provide a probative association between a bullet from a crime scene and another bullet. In 2012, following several DNA exonerations in cases where the conviction was based on microscopic hair examinations, the FBI acknowledged that its hair examiners were regularly giving improper forensic testimony and misstating the probative value of hairs they had examined. An audit of those cases is now underway to identify additional wrongful convictions.

Confirmation of the depth of the problem came in 2009, when the National Academy of Sciences, one of the nation’s leading scientific institutions, issued its report, *Strengthening Forensic Science in the United States, A Path Forward*, finding that the forensic sciences need to be strengthened through oversight and research to play a more reliable role in identifying perpetrators of crime, protecting the wrongly accused and ensuring public safety. The report pointed out that only nuclear DNA had been subjected to adequate scientific review and that the other commonly used pattern matching disciplines (i.e. fingerprints, hair, bite marks) need to be supported by the same level of research.

The convictions of thousands of individuals across the country become suspect in light of these findings. It is essential that law enforcement support efforts to ensure that only valid and accurate forensic science are used in investigations. Ongoing efforts such as the National Commission on



Forensic Science and the National Institute of Standards and Technology's Organization of Scientific Area Committees are opportunities to move the field in an important and much more scientific direction. The last two years have seen small increases in federal funding for basic and applied research in the forensic sciences as the issue has gained importance. Law enforcement needs to add its voice to these efforts for the sake of us all.

Recommendations:

- 1. To improve public confidence in policing, join the call for research and oversight of the forensic disciplines.*

To improve trust and build legitimacy, law enforcement must only employ the most reliable practices that will reduce the arrest and conviction of the innocent and lead to the identification of the truly responsible. As this Task Force addresses these important questions, we encourage you to add your voice to the community of scientists, forensic scientists, advocates, and law enforcement professionals asking Congress to allocate funds for basic and applied research to study these disciplines. Improving the tools that police use in investigations will make the work of police more accurate and more efficient. Every time that police focus on an innocent person, the actual perpetrator escapes detection. Improved science can only help improve public safety and justice. Similarly, law enforcement agencies should require their forensic analysts to limit their testimony regarding the probative value of associations made with insufficiently validated techniques to statements that are consistent with science and not overstate their meaning or significance. Juries deserve accurate information—defendants deserve the truth.

- 2. To promote the fair and impartial analysis of forensic evidence, support training on human factors and cognitive biases in policing.*

The Innocence Network submitted a set of recommendations on these issues in its February 12, 2015 letter to the Task Force on the topic of training and education. We reinforce the importance of training officers and crime lab analysts in techniques that reduce the possibility of human factors in the collection and analysis of evidence. For example, blind analysis and sequential unmasking, whereby potentially biasing and superfluous information about a crime is concealed from the forensic examiner, should be employed during the course of a criminal investigation.

We understand these processes would require additional resources, but we believe they are small in comparison to the damage that the arrest and wrongful conviction of innocent people has on public trust in the police and on police legitimacy. Through a renewed commitment to scientifically based police practices and procedures, we envision a more reliable, accurate and fairer criminal justice system that prevents the false conviction of innocent people.

Thank you for this opportunity to share our experiences and recommendations. We hope that the Task Force will review and adopt these recommendations to ensure the delivery of true justice, prevent wrongful convictions, and increase public confidence in police practice. We look forward to serving as a continuing resource to the Task Force, and to your success as you carry out this critical charge.

A handwritten signature in dark ink, reading "Madeline H. deLone".

Madeline H. deLone, Esq.
Executive Director, Innocence Project



DIGNITY IN SCHOOLS CAMPAIGN | INFO@DIGNITYINSCHOOLS.ORG | WWW.DIGNITYINSCHOOLS.ORG

February 23, 2015

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 members of the Task Force on 21st Century Policing,

The Dignity in Schools Campaign (DSC) welcomes the opportunity to submit comments to the Task Force on 21st Century Policing and to highlight how students of color, students with disabilities, and LGBTQ students are negatively impacted by discriminatory policing practices in schools that criminalize them, push them out of school, and contribute to the School-to-Prison Pipeline. The DSC is a coalition of 92 organizations from 24 states, including students, parents, educators, researchers, and LGBTQ, civil rights and education organizations, dedicated to ending punitive school discipline practices that push students out of school. DSC is committed to the vision of a fully functional, accountable, and successful public school system that protects every student's human right to a quality education and to be treated with dignity. We urge the Task Force to consider the recommendations outlined herein to end the criminalization of children in our nation's public schools and promote positive school climates and inclusive discipline policies and practices.

For decades, we have witnessed the increased criminalization of our nation's youth, especially youth of color, LGBTQ youth, and students with disabilities, through the implementation of "zero tolerance" school discipline practices enacted after high-profile tragic school shootings.¹ The 1994

¹ "We have seen young people who are pushed out of schools by hostile and prison-like school cultures. We have seen time, energy, and resources devoted to the criminalization, not the education, of young people." *Police in Schools Are Not the Answer to the Newton Shooting*, January 2013, at 4, Joint Brief of the NAACP Legal Defense and Educational Fund, Inc., Advancement Project, Dignity in Schools Campaign, and the Alliance for Educational Justice, available at [http://www.naacpldf.org/files/publications/Police in Schools are Not the Answer to the Newtown Shooting - Jan. 2013.pdf](http://www.naacpldf.org/files/publications/Police%20in%20Schools%20are%20Not%20the%20Answer%20to%20the%20Newtown%20Shooting%20-%20Jan.%202013.pdf).

Gun-Free Schools Act,² originally enacted to prohibit weapons on school campuses, further spurred the proliferation of these “zero tolerance” policies.³ Under “zero tolerance” policies, students can be automatically expelled for certain disciplinary infractions. Initially, these infractions were limited to possession of firearms on school grounds, but increasingly, they became applicable to minor misbehavior, such as “disrespect.” This has resulted in higher rates of school-based arrests, again, for mostly minor and non-violent offenses. Instead of improving school safety, these practices have blurred the lines between school discipline and school safety, pushing students out of school and into the juvenile justice system,⁴ particularly through increased reliance on police in schools to handle routine discipline matters.⁵

In fact, increased police presence in schools has disproportionately affected the number of students of color, LGBTQ students, and students with disabilities being referred to the juvenile justice system and subjected to school-based arrests. For instance:

- Although they represent only 16 percent of public school enrollment nationwide, African-American students comprised 31 percent of students subjected to a school-related arrest in the 2011-2012 school year.⁶ This is despite data showing that African-American students do not misbehave more frequently than their peers.⁷
- Students with disabilities, although representing only 12 percent of the overall student population, comprised a quarter of students referred to law enforcement in the 2011-2012 school year.⁸
- Research shows high rates of bullying of LGBTQ students by both their peers and by school staff and targeting of LGBTQ students by school police for punitive discipline.⁹

² 20 U.S.C. § 7151 (2002). The original Gun-Free Schools Act of 1994 was repealed and re-enacted in part in the reauthorization of the Elementary and Secondary Education Act (ESEA) of No Child Left Behind (2002). Noting, that “[e]ach State receiving Federal funds under any subchapter of this chapter shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school.”

³ Dr. Monique W. Morris, October 21, 2014, *Black Girls and 20 Years of Zero Tolerance Policies*, Ebony Magazine, available at <http://www.ebony.com/news-views/black-girls-and-20-years-of-zero-tolerance-policies-943#axzz3SaVWRnQj>.

⁴ *Police in Schools Are Not the Answer to the Newton Shooting*, January 2013, at 4, Joint Brief of the NAACP Legal Defense and Educational Fund, Inc., Advancement Project, Dignity in Schools Campaign, and the Alliance for Educational Justice, available at [http://www.naacpldf.org/files/publications/Police in Schools are Not the Answer to the Newtown Shooting - Jan. 2013.pdf](http://www.naacpldf.org/files/publications/Police%20in%20Schools%20are%20Not%20the%20Answer%20to%20the%20Newtown%20Shooting%20-%20Jan.%202013.pdf).

⁵ *Id.*

⁶ Department of Education-Office for Civil Rights, Civil Rights Data Collection, March 21, 2014, Data Snapshot: School Discipline, available at <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.

⁷ Skiba, Russell, et. al, *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, Policy Research Report #SRS1 (June 2000), the Indiana Education Policy Center; Rudd, Tom, *Racial Disproportionality in School Discipline: Implicit Bias is Heavily Implicated*, Kirwan Institute Issue Brief, Kirwan Institute for the Study of Race and Ethnicity, The Ohio State University, February 2014.

⁸ *Id.*

⁹ “Research shows that LGBTQ youth of color in particular face persistent and frequent harassment and bias-based bullying from peers and school staff as well as increased surveillance and policing, relatively greater incidents of

Increased police presence in schools also significantly and negatively impacts school climates, with many schools resembling correctional institutions, rather than institutions of learning. Every day, students attend schools where they pass through metal detector screenings, are pepper-sprayed by school police, and subjected to humiliating body searches, which promote what scholar Dr. Monique W. Morris terms a “culture of surveillance,”¹⁰ with students of color, students with disabilities, and LGBTQ students most likely to be targeted.¹¹

In addition, many students report high rates of excessive use of force by school police. Students report that school police routinely use tasers and pepper spray on students for minor offenses. DSC supported the filing of a complaint with the Department of Justice against Wake County Public Schools in Wake County, North Carolina, in light of reports of excessive use of force by school police against African-American students. In one reported incident, school police were called to respond to a water balloon fight, resulting in the arrest of seven students.¹² Similar reports of excessive use of force by police in schools have been filed all over the country, including in Texas and in California. Increased police presence in schools has only contributed to the practice of criminalizing adolescent behavior that formerly would have been addressed through instructive, in-classroom discipline.¹³

DSC also supported other civil rights and education organizations calling for an end to the Department of Defense’s 1033 Surplus Military Equipment program’s lending of military weapons to law enforcement agencies for use in K-12 schools. DSC is concerned about the use of military weapons by school police in routine discipline matters and reports of several school districts receiving high-grade military weapons, including AR-15s, M-16s, and Mine-Resistant Ambush Protected (MRAP) vehicles – districts receiving such weapons include districts in Texas, Florida, and California. After media reports, some districts returned the military weaponry and DSC has launched an online petition,¹⁴ which currently has over 1,000 signatures, calling for an end to the

harsh school discipline, and consistent blame for their own victimization.” Burdge, Hilary, et. al, Gay-Straight Alliance Network (GSA Network), *LGBTQ Youth of Color: Discipline Disparities, School Push-out, and the School-to-Prison Pipeline*, available at, <http://www.gsanetwork.org/Pushout-Report>.

¹⁰ See Dr. Monique W. Morris, October 21, 2014, Black Girls and 20 Years of Zero Tolerance Policies, *Ebony Magazine*, available at <http://www.ebony.com/news-views/black-girls-and-20-years-of-zero-tolerance-policies-943#axzz3SaVWRnQj>.

¹¹ *Police in Schools Are Not the Answer to the Newton Shooting*, January 2013, at 4, Joint Brief of the NAACP Legal Defense and Educational Fund, Inc., Advancement Project, Dignity in Schools Campaign, and the Alliance for Educational Justice, available at [http://www.naacpldf.org/files/publications/Police in Schools are Not the Answer to the Newtown Shooting - Jan. 2013.pdf](http://www.naacpldf.org/files/publications/Police%20in%20Schools%20are%20Not%20the%20Answer%20to%20the%20Newtown%20Shooting%20-%20Jan.%202013.pdf).

¹² The Center for Public Integrity, January 24, 2014, *North Carolina Complaint Alleges Excessive Force by Police in Schools*, available at <http://www.publicintegrity.org/2014/01/24/14158/north-carolina-complaint-alleges-excessive-force-police-schools>.

¹³ See Dr. Monique W. Morris, October 21, 2014, Black Girls and 20 Years of Zero Tolerance Policies, *Ebony Magazine*, available at <http://www.ebony.com/news-views/black-girls-and-20-years-of-zero-tolerance-policies-943#axzz3SaVWRnQj>.

¹⁴ Dignity in Schools Campaign, Petition to President Obama and Congress, End the 1033 Program’s Lending of Weapons to Law Enforcement in K-12 Public Schools, available at <https://www.change.org/p/barack-obama-end->

1033 Program's lending of such weapons for use by school police. In light of reports of excessive use of force with weapons like tasers and pepper spray, high-powered military weapons only further contribute to the criminalization of students and the militarization of our nation's public schools.

The consequences of increased police presence in schools and the resulting discipline disparities are significant, especially for students of color, LGBTQ students, and students with disabilities. These students are more likely to experience poor educational outcomes, accompanied by feelings of alienation and disengagement from the learning environment.¹⁵ The American Academy of Pediatrics, the American Psychological Association, and the Council of State Governments, have all identified links between exclusionary discipline (like out-of-school suspensions and police interactions) and lower academic achievement and higher dropout rates.¹⁶ Academic outcomes are, therefore, strongly linked to discipline practices that keep kids in the general classroom and engaged in learning.

To promote positive school climate and help reform overly punitive and discriminatory discipline practices by police in schools, we forward the following recommendations:

Recommendations to End Discriminatory and Overly Punitive Discipline Practices by Police in Schools

- Reduce federal funding for police in schools and target federal funding towards best practices for inclusive discipline and alternatives to overly punitive discipline practices, including Restorative Justice practices, peer mediation, Social and Emotional learning (SEL) curricula, and Schoolwide Positive Behavioral Interventions and Supports (SWPBIS). Such funding should also incentivize replacing school-based law enforcement officers with other school-based support staff, including school counselors, mental health professionals, and community intervention workers, who are essential for building relationships with students and maintaining school safety.

For school districts where police officers are already placed within schools:

- End the use of existing police, School Resource Officers (SROs) or other law enforcement personnel assigned to schools for the handling of minor, non-violent, routine discipline matters.

[the-1033-program-s-lending-of-weapons-to-law-enforcement-in-k-12-public-schools?recruiter=198516886&utm_source=share_petition&utm_medium=email&utm_campaign=share_email_responsive](http://www.naacpldf.org/files/publications/Police%20in%20Schools%20are%20Not%20the%20Answer%20to%20the%20Newtown%20Shooting.pdf) (currently at 1,022 signatures)(last visited February 23, 2015).

¹⁵ *Police in Schools Are Not the Answer to the Newton Shooting*, January 2013, at 4, Joint Brief of the NAACP Legal Defense and Educational Fund, Inc., Advancement Project, Dignity in Schools Campaign, and the Alliance for Educational Justice, available at [http://www.naacpldf.org/files/publications/Police in Schools are Not the Answer to the Newtown Shooting - Jan. 2013.pdf](http://www.naacpldf.org/files/publications/Police%20in%20Schools%20are%20Not%20the%20Answer%20to%20the%20Newtown%20Shooting.pdf).

¹⁶ *Id.*

- Target federal funding towards mandatory training of school police on implicit bias¹⁷ and how it impacts discretionary disciplinary decisions, cultural competency training, trauma-responsive approaches to discipline, and youth development.
 - Both educators and law enforcement officers assigned to schools must undergo training in evidence-based practices, including: conflict resolution practices and incident de-escalation techniques; crisis management; effective strategies for asserting authority with teens, recognizing age-appropriate behavior and providing developmentally appropriate responses; racial bias and culturally responsive pedagogy; recognizing behaviors that may be caused by disabilities and appropriate responsive pedagogy, the Individuals with Disabilities Education Act (20 U.S.C. 1400, *et seq.*) (IDEA) and its requirements concerning discipline of children with disabilities; the school's plan for improving school climate and maintaining student safety, and any evidence-based disciplinary practices used by the school.
 - Federal funding should be targeted to districts so that training can occur prior to placement of officers in schools (pre- service), must re-occur quarterly (in-service), and must be conducted by professionals in the relevant fields, including school counselors, school social workers, school psychologists, child and adolescent psychiatrists and other qualified professional personnel.

- Require school districts receiving federal funding to implement a Memorandum of Understanding (MOU) between the school district and grantee law enforcement agency placing police officers within the school. The agreement shall specify that the goal of placing law enforcement in schools is to promote safety, and also specify that the agreement is in place to limit police involvement in school discipline issues. It should not that law enforcement should to be used in school discipline only as a last resort. Other parameters of the MOU should specify scope of use of allowable police actions in: searches of student lockers (ensuring adherence to constitutional search requirements); questioning of students (again adhering to constitutional standards); prohibition on strip searches of students.

- Ensure that the grantee school districts compiles and reports on a quarterly basis to the granting federal agency comprehensive data (disaggregated by student subgroups, including race, gender, disability status, and self-reported LGBT status and cross-tabulated) on student interaction with law enforcement, including interactions, arrests, ticketing, citation, summons or other referrals to law enforcement, as well as interactions with law enforcement that do not result in formal referral to the justice system.
 - This data should include steps taken to address the issue prior to police involvement (if applicable) the manner in which the officer(s) was (were) notified, any searches or questioning of students, arrests or other referrals to court made, and tickets, citations, or summonses issued.

¹⁷ Implicit bias is defined as “the mental process that causes us to have negative feelings and attitudes about people based on characteristics like race, ethnicity, age, and appearance. Because this cognitive process functions in our unconscious mind, we are typically not consciously aware of the negative racial biases that we develop over the course of our lifetime.” Rudd, Tom, *Racial Disproportionality in School Discipline: Implicit Bias is Heavily Implicated*, Kirwan Institute Issue Brief, Kirwan Institute for the Study of Race and Ethnicity, The Ohio State University, February 2014.

- This data should be regularly monitored by federal, state, and local governments for indications that police are inappropriately involved in school discipline matters and/or that racial disparities exist. Full submission and certification of data reporting shall be a prerequisite for continued funding.
- This data should be publicly available and provided to parents. Such data must respect student privacy, but to the extent possible detail the specific charge and interaction between student and school police. Incidents referred to outside police departments should also be documented and reported.
- School districts and police departments that place law enforcement officers in schools shall establish a complaint process for any member of the school community or public to report the misconduct of officers involved in a school-related incident. Complaints must be swiftly investigated by an independent body and resolved in writing.
 - Where a complaint alleges serious abuse by an officer, that officer may not be deployed to respond to any school-based infraction until the complaint is resolved.
 - Where allegations of serious abuse against an School Resource Officer (SRO) or police officer are substantiated, the officer must be permanently suspended from any school detail. Statistics on filed and resolved complaints must be reported annually.
- The school district should establish a stakeholder group of students, teachers, administrators, parents, health professionals, and community leaders to monitor adherence to the MOU and the complaint process. This group should be empowered to receive any and all data related to school-based offenses from the police department and the school district (subject to applicable laws and regulations) and can make recommendations to the school district and the police department concerning school safety and climate and/or changes to the agreement. School district staff and the police department must be required to meet regularly with this group to discuss school safety and climate and to review protocols and training needs as necessary.

We thank you for this opportunity to comment and for the opportunity to urge action to end discriminatory and overly punitive discipline practices by police in schools. The education of our nation's children in positive school climates is central to ensuring positive educational outcomes. If you have any questions regarding this letter, please contact Janel George with the NAACP Legal Defense and Educational Fund, Inc. (LDF) at 202-682-1300. Thank you for your time and consideration.

Sincerely,

Dignity in Schools Campaign
(www.dignityinschools.org)

Recommendations To:

**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**

Submitted By:

Chief Jimmie Dotson (retired)

Houston Independent School District Chief of Police; Chattanooga PD Chief of Police; Houston PD
Assistant Chief of Police and Executive Assistant Chief of Police

GeoDD GeoPolicing Team

Hardcopy sent under separate cover to address above.

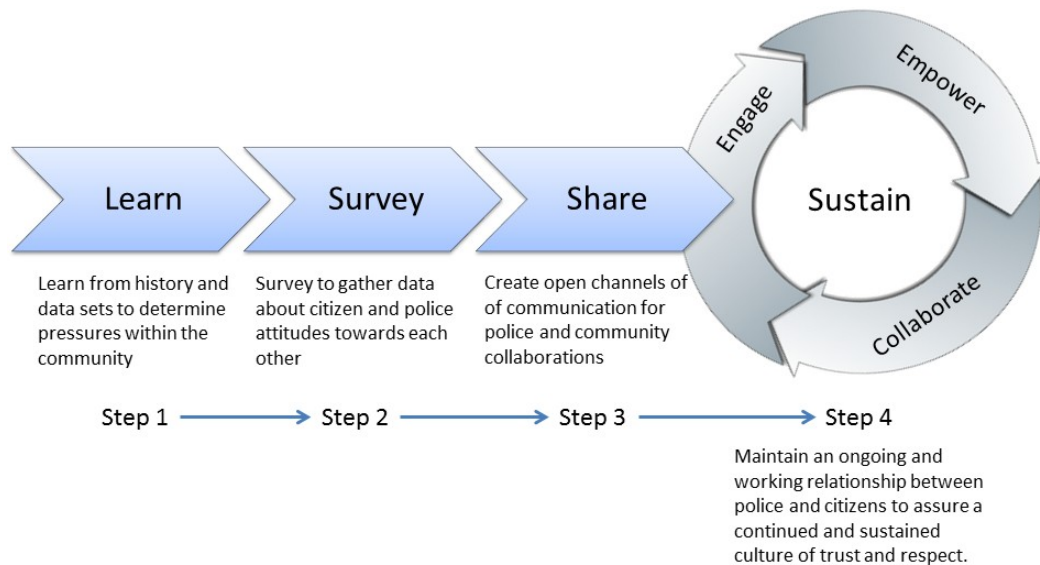
RECOMMENDATIONS TO THE 21ST CENTURY POLICING TASK FORCE

17 February 2015

SUBMITTED BY: Chief Jimmie Dotson (retired),¹ with the GeoPolicing Team

ABSTRACT

Our submission to the Task Force on 21st Century Policing includes a series of recommendations that tightly align with the Executive Order signed by President Obama on Dec 18, 2014 and seeks to strengthen public trust and foster strong, sustainable relationships between local law enforcement and the communities and citizens they are charged to protect. Our GeoPolicing team includes retired Chiefs of Police, pioneers in the field of community policing, law enforcement experts, police psychologist, technologists and nationally-practiced collaboration and facilitation specialists. The visual overview of this recommendation is displayed in the following figure.



OVERVIEW OF RECOMMENDATIONS

In keeping with the objectives of the Task Force we have developed recommendations that are 1) simple to understand and implement, 2) are innovative, effective and valuable, not a reinvention-of-the-wheel, 3) include both short-term immediate fixes and long-term structural actions and 4) sustainable over time. Table 1 below summarizes our objective and goals.

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Table 1. **Objective and Goals of Recommendation**

Objective	Implement a Pilot for Enhanced Civility and Trust in 5 cities with great need:
Goals	A) Cities under Consent Decree by DOJ B) Other cities with need (self-identified or data-discovered)
1	Neighborhood Barometer Combine Survey Data with historical and current crime, demographic, and physical place data to identify key factors and patterns in neighborhoods with the greatest need to improve community-police connections.
2	Public and Police Pulse/Attitudes Survey Consider the gaps of understanding between police and community with ongoing web-based surveys to discern levels of fear, trust, and specific needs.
3	Townhall Meetings Regular in-person and on-line discussions to share information, determine needs for training and education, and to collaborate on issues. Identify and empower civic and faith-based groups to build powerful relationships between citizens and police.
4	Sustainability Ongoing use of community policing philosophy to engage and strengthen police, civic/community organizations and citizens to create deeper <i>self-monitored</i> "ownership" of neighborhoods and routinely develop and measure successes.

RECOMMENDATIONS

The President of the United States (POTUS) has established a *21st Century Policing* Task Force to recommend solutions to reduce/eliminate the intolerance and disrespect that has erupted in different parts of the country between police and citizens. POTUS stated at a press conference that he is NOT looking for: "a bunch of abstract musings about race relations." He is looking for concrete practical things that police departments and law enforcement agencies can begin implementing right away "to build that trust between communities of color and the police department." The underlined words are the key expectations desired for any intervention recommended.

We, the GeoPolicing Team, have accepted the challenge and provide these recommendations to the Task Force. We are a newly formed team, supported by the GeoDimensional Decision Group, driven by a *patented process* that has the power to sort and investigate huge amounts of data to find factors and patterns not easily seen with other methodologies. It's the big data version of finding *needles-in-the-haystack*. In this case, the *needles* are the key contributing factors and patterns that have led to violent and often lethal outcomes. Our GeoPolicing team includes two police chiefs and a police psychologist.

Taking into account the expectations of POTUS and the stated interests of the Community Oriented Policing Services (COPS) within the U.S. Department of Justice, our approach has four goals:

- Goal 1: **Neighborhood Barometer:** Analyze both historical and current data to better understand the Who, What, Where and How of encounters between police and citizens to discern key factors and gain insight about patterns that lead to conflict.
- Goal 2: **Public/Police Attitudes Survey:** Sort and analyze collected data and measure the level of understanding by all groups. Identify gaps in understanding and develop plans that close those gaps by building optimal relationships and implementing actionable processes.
- Goal 3: **Townhalls:** Facilitate information sharing through traditional and digital media communication channels to reveal needs and to craft shared solutions for building trust and respect. This includes finding structure to 'house' and sustain trust building.
- Goal 4: **Sustainability:** Engage, encourage, and empower civic, faith-based, and established groups in communities to partner with law enforcement. Develop a neighborhood policing philosophy that will help further improve and sustain positive gains in civility and trust in neighborhoods and create self-monitoring protocols for police so they can continually assess their relationships with citizens. Consider establishing a Quality of Life (QoL) measure to track benefits.

The overarching effort of these goals is to 1) provide ideas for immediate actions and engagements that blunt further citizen-police confrontations, and 2) recommend structure so that positive changes can be maintained and improved over time to build good citizen-police relationships with respect and trust. For this recommendation to get started, the collaboration of citizens, police, and trained third-party facilitators will be required.

The systems and recommendations presented are not presumed to be needed by all communities and neighborhoods across the country. They are designed to be available to those communities that see themselves as at-risk and wanting to take proactive steps towards fostering a better relationship between law enforcement and their communities.

There are a number of ways to identify communities that could benefit from implementing the recommendations. One way might be to select cities that are under *consent decrees* with the Department of Justice. Consent decrees effectively identify communities with recognized challenges and inherent needs for effective tools and processes to bring about positive change. Another way would be to look nationally and attempt to mine data using specialized systems and open source indicators that drill down regionally and then locally to identify those communities that under closer investigation would be good candidates for the system and warrant further investigation.

In Table 2, we have aligned our GeoPolicing actions with POTUS' expectations. We have suggested Steps 1 through 4 as means to address proposal Goals 1 and 2 (immediate and mid-term) and Goals 3 and 4 (mid-term and long-term). These are our recommended steps in rebuilding a police-citizen approach for collaborative decision making (i.e., Neighborhood Policing).

Data, Data, Data – Not intuition or guessing, but data will lay the groundwork for designing interventions. Using the latest digital data collection techniques to include mobile apps and open

source indicators, data analysis and mapping, online surveys and, when needed, traditional survey methods, we suggest collecting as much raw data as possible relating to neighborhoods, citizens and the police. This data will not include personal or otherwise sensitive information and will be designed to avoid bias. Once the data is collected and analyzed, findings would be presented in a series of neighborhood meetings.

Steps 1 and 2– We learn from history across different police departments and like a barometer measure the pressures within the community. Beyond obvious chronological data, we will sort (with the patented **KNOW**System™) for hidden data to find key contributing factors and patterns from events that have resulted in violent and often lethal outcomes. As an adjunct to the historical search, we will implement several other technologies to include **KNOW**Spot™ which monitors potential future locations of conflict between police and citizens. These flashpoints are identified and could be responded to with appropriate resources and interactions designed to avert potential violence and destruction of property.

In order to rationally determine optimal means to move toward civility with respect and trust, we will want to collect data to ascertain what police and citizens think and believe. Our **KNOW**Pulse™ technology will be used to gather data in real-time from citizens and police regarding attitudes towards and knowledge about each other. Gaps in understanding will be revealed and be subject to intervention, either with training, information, education, and/or monitoring.

Step 3 – There must be a clearinghouse for information in this undertaking. A third technology, **KNOW**Share,™ will make available information about all aspects of the process via a community website to increase understanding with transparency. The Step 3 insights will serve as starting points to consider a **structure** within Community Policing to learn, educate, and monitor that will continue to build trust between police and citizens.

Step 4 – The final step addresses sustainability. All the technologies, processes and collected insights from steps 1 – 3 will collectively become part of a sustainable culture of continuous improvement that monitors, measures, enhances and serves to strengthen the relationship between police and citizens. [As an adjunct, we have included several means to measure success of these recommendations. In Appendix A, we suggest two different means to gauge success – Return-on-Investment (ROI, Table A) and Quality of Life (QoL, Table B) measures. Having a way to measure success provides numerical justification for investing in any solution.]

Table 2. President Obama's expectations for the Task Force

(1) Presidents Expectations	(2) GeoDD Recommend-ations	(3) Actions	(4) Device Suggested*	(5) Results	(6) Benefits
(not) abstract musings IMMEDIATE ACTION²	Use data to design interventions	Step 1. LEARN FROM HISTORY (barometer).	KNOWSpot™ is a flashpoint monitor	Detailed maps for policing decisions that show precise locations of and characteristics of neighborhoods with gaps between community and police trust and engagement.	Identify 'key' factors and discern any patterns of activities that lead to confrontations, including lethal force
Practical things Right Away IMMEDIATE AND MID-TERM ACTIONS	Use Mobile App to gather data from citizens and police	Step 2. DETERMINE WHAT CITIZENS AND POLICE BELIEVE (survey).	KNOWPulse™ digital survey app to gather real-time data about citizens and police attitudes	Discover neighborhood level gaps in trust and communication. Intangible factors will also be captured (fear, satisfaction, etc.) Discover knowledge gaps (e.g., ignorance about police requests, etc.)	Leads to short term fixes as to who, what, where are identified** Reveals where to focus resources to include necessary police training, public education, use of body cams, etc. This may include tolerance and cultural awareness training; include educating public to police procedures; and suggest tools to reinforce proper behaviors and oversee officer self-monitoring protocols. May include a Quality of Life barometer!
Build trust between ... communities and police... MID TO LONG-TERM ACTIONS	Present findings in town hall meetings	Step 3. SHARE RESULTS (town hall) and move toward designing interventions.	KNOWShare™ community website	Real-time open communication channel for police/community collaborations	This leads to long-term structural solutions involving both police and communities; and energizes neighborhood policing that includes police training, police and citizen educating, communicating, and monitoring. Suggest complementing programs like "Coffee With A Cop" as started in 2011 in Hawthorne, CA, now DOJ funded in 47 states.
		Step 4. SUSTAIN GAINS	Engage civic, faith-based groups to collaborate with law enforcement in an ongoing basis.	Enhance Community Policing philosophy to develop structure that monitors, measures, and serves as focal point for continuous improvement within neighborhoods.	Trust building results from engagement with each other and from collaborative discussions.

*Detailed descriptions for the three devices are provided in Appendix B.

**The data gathered from this will address COPS concerns around 'understanding' and 'relationship building.'

Understanding

- police will better understand the cultural dynamics within a neighborhood
- citizens will understand the constraints under which police operate
- citizens have a voice and feel part of the solution and take control over their quality of life

Relationship Building

- there will be an increased mutual respect between police and the citizens, from more communications, thus increased trust
- collaborations and common ground will be fostered and found
- energy and camaraderie between PD and Communities will ensue as, together, they can show pride in improving their home turf
- ongoing neighborhood Cultural/Racial Enrichment sessions will build trust and improve the quality of community life

²These time frames are relative estimates: Immediate = 1-3 months; Mid-Term = 2-12 months; Long-term = 12+ months. Upon engagement, more precise timeframes will be determined with all the players involved. For details, see Appendix B footnote.

The GeoPolicing Team

Dr. Lee P. Brown: 'Father of Community Policing' (*Policing in the 21st Century: Community Policing*, AuthorHouse, 2012); Past Chief Houston, NYC, Atlanta; past Mayor of Houston.

Jimmie Dotson: Currently policing consultant; formerly Houston Independent School District Chief of Police; Chattanooga PD Chief of Police; Houston PD Assistant Chief of Police and Executive Assistant Chief of Police.

Dr. Meagan Houston: In private practice; current licensed police psychologist, Houston PD; national Instructor for PESI/CMI; previously Prison Psychologist for the Department of Justice, Federal Bureau of Prisons.

Dr. Baldwin H. Tom: Trained strategic facilitator; past consultant with Houston PD; scientist/professor Stanford, Northwestern, Univ. Texas; past National Chair of Institute of Management Consultants USA.

Greg Reinecke: Expertise in mapping/geographic information systems (GIS) with publications; geospatial analysis of big-data sets, and data quality; past senior executive supporting large Federal and DoD geospatial contracts.

Scott Stafford: Applied Demographer, audience segmentation and community outreach specialist; work with Federal and State government agencies on public health and safety projects, including engagements with law enforcement.

APPENDIX A – SURVEY TOOLS

As a leader, when people, time, and resources are used it is critically important to consider cost and value. The benefits from improving civility that leads to increased mutual respect and trust between police and citizens can be measured in two ways. First, we can use the traditional financial approach that focuses on specific tangible factors leading to a Return-on-Investment (ROI) number. With the expectation that for one unit of effort there would be a multiple of units in return, e.g., 34 to 1 return. We have provided an example of a ROI computation in Table A. The question for leadership: “Is a return of 34 to 1 worth taking action?”

There is another approach to measuring value. This is to look at the sociological, nonfinancial factors. This might be called a Quality of Life (QoL) measure. We have provided an example of QoL valuation in Table B.

Table A. ROI Valuation from Recommendations

Item	Activity	Benefit Component	Proposed Valuation Score*
STEP 1 – LEARN FROM HISTORY (Score = 4)			
1	Alignment with Department mission	Knowing key contributing factors and patterns optimizes buy-in; reduces push back; reduces deliberations; suggests solutions	4
STEP 2 – DETERMINE WHAT CITIZENS AND POLICE BELIEVE (Score = 12)			
2	Benefit to the PD	Focuses resource needs; improves targeted use of funds; improves morale; eliminates delay of important actions	4
3	Benefit to officers (WIIFM)	Feel more supported, confident, secure and more engaged.	4
4	Benefit to citizens (WIIFM)	Participation provides feeling of importance; improves morale; removes anxiety & chronic concerns	4
STEP 3 – SHARE RESULTS (Score = 18)			
5	Benefit to police/citizen relationships	Improves communications; eliminates major confrontations; minimizes misunderstandings; optimizes results; creates efficiencies; fosters collaboration	4
6	Benefit to society	Saves lives; reduces property loss; positive outcomes enhance police's and community's images.	10
7	Performance measurements	The numerical nature and objectivity of the decision options provides performance measures; assures 'owners' there is a scorecard with means to demonstrate success.	4
8	Composite ROI	Demonstrates leveraging of actions	Anticipate 50-100X return; in this example, it is a 34:1 ROI .

*Valuation scoring:

1. If impacts the whole, use a 4x multiplier (Steps 1-5, 7); value 4 is used to suggest that without the benefits components, it would take 4-times as long to come to a similar point in deliberations. Estimating a Valuation Score takes into account people, time, expense, and impact so it is not difficult to imagine very high Valuation Scores in this exercise.
2. If impacts society, use a 10x multiplier (Step 6)
3. Composite ROI: This is an extremely conservative estimate of value based on leveraging the benefits. We are adding the value scores here to be conservative. More than likely, the aggregate benefits should be multiplied in some cases. For example, if one life is saved, would that be a 100X value?

A possibly more valuable measure of the recommendations' success for citizens are tangible metrics that show an increase in the Quality of Life (QoL). The QoL table below provides a template for recording and measuring changes in QoL resulting from actions taken by a community. A positive trending QoL will inform the community that headway is being made. Showing positive QoLs will aid the ongoing sustainability of the recommendations and program in building better public and police relationships.

Table B. QoL Impact from Recommendations*

Item	Category+	Factors Considered	BEFORE Improve**	AFTER Improve**	Proposed Valuation Score***
1	Physical	Sports, running paths, parks			
2	Mental	Safety, security, free from worry, stress			
3	Spiritual	Peace of mind, satisfaction about life			
4	Health	Mental, spiritual, physical health			
5	Social and Community vitality	Welcoming place; house value; information/communications; walk/bike paths; crime, discrimination, safety; neighborhood safety			
6	Cultural vitality	Arts, music, parks access, clean, safe			
7	Education	Safe schools			
8		Composite QoL			

***Quality of Life question:** "If a family wants to move into a neighborhood, does what we have done to improve police/citizen relationships increase the QoL?" Here are some categories that might be considered in such a QoL measure. Will the improvements increase Quality of Life positively?

+Categories and factors are chosen by citizens to represent what factors contribute to Quality of Life for them. These are listed here as examples.

**Valuations are determined by a survey of citizens affected by the recommended actions. Scoring is from 1-10, with 10 representing the ideal. Taking a QoL score over time will show positive or negative trends over time and help focus where effort is needed to impact future trends.

***Final proposed valuation is the difference between Before and After improvement scores, either positive or negative.

APPENDIX B – DESCRIPTION of TOOLS*

Details of DATA-Capture and Dissemination TOOLS

	KNOWPulse™ Real-time Digital Survey	KNOWSpot™ Flashpoint Monitor	KNOWShare™ Community Social Media Connections
What does the tool do?	<ol style="list-style-type: none"> 1) Let's us learn what both police and citizens believe and feel. 2) Identifies neighborhoods with significant gaps in trust between police and citizens by gathering information on attitudes about police, and policing from citizens; input also from police officers and commanders. 	<ol style="list-style-type: none"> 1) Is a conflict early warning system. 2) Sorts historical data from past lethal situations for key contributing factors and patterns leading to lethal outcomes. 3) Collects Open Source Info (OSI) from structured data sources (public and private data sets, information with metadata, surveys) with unstructured data sources (Web 2.0 social media, web searches, news, blogs, google trends, tweets) 4) Structured data can be geotagged and unstructured data is placed less exact geotagged bounding boxes. 5) Data types are fused identifying and geolocating intersections and overlaps with the data. 6) Measures the likelihood of potential unrest based on factors that include demographics on population age, race/ethnicity, educational attainment, primary language, median income, population density 	<ol style="list-style-type: none"> 1) Ensures a process for meaningful communications between law enforcement and the neighborhoods. 2) Builds wider and deeper connections between police and citizens
What answers will tool provide?	<ol style="list-style-type: none"> 1) What neighborhoods have the greatest need for more understanding and better communication between police and citizens? 2) What are the more significant and emerging issues that police and citizens are raising about police service in specific neighborhoods? 3) Why certain neighborhoods have potential to create situations that traditionally might lead to excessive force? 	<ol style="list-style-type: none"> 1) Forecasts likely zones of unrest 2) Where to deploy outreach to bridge gaps that involve police, citizens, and various elected officials, business and community groups? 3) What are sensitivities relating to cultural matters such as primary language use and differing backgrounds between citizens and officers? 	<ol style="list-style-type: none"> 1) What are citizens and police more concerned with presently (and over time)? 2) Who is more interested in strengthening connections between police and citizens? 3) What are best ways to address tolerance/ intolerance issue? 4) What is best structure to manage and monitor results and ongoing improvements?
What data is gathered?	<ol style="list-style-type: none"> 1) Level of trust 2) Level of police engagement 3) Types of police engagements 4) Grievances, Police/Citizen 5) Ongoing safety issues 6) Growing safety issues 7) Citizens' understanding of police procedures 8) Citizens' quality of life concerns 	<ol style="list-style-type: none"> 1) Excessive force incident reports from national database (date, time, location, officer demographics); 2) Nationwide neighborhood level: a) demographics on population age, race/ethnicity, educational attainment, primary language, median income, population density; b) police jurisdictions, districts and beats; and c) (where 	<ol style="list-style-type: none"> 1) Posted comments 2) Locations of possible neighborhood assets that can facilitate outreach and programs 3) Suggested calls to action within the neighborhood

	KNOWPulse™ Real-time Digital Survey	KNOWSpot™ Flashpoint Monitor	KNOWShare™ Community Social Media Connections
		available) primary and secondary police patrol types (i.e., foot, bicycle, motor vehicle, motorcycle)	
How is data processed?	1) Gathered via web survey instrument 2) Analyzed with factor analysis and geographic and socioeconomic commonalities	1) Factor analysis to determine correlations between events and related data, 2) Geographic analysis to identify locations and relative rates of incidents 3) Correlation of data from Item 1) above and KNOWPulse™ to identify likely neighborhoods with high rates of contributing factors.	Reviewed and analyzed for themes and emerging trends in collaboration with police Public Information Officers (PIOs) and police commanders.
How is tool deployed?	1) Results incorporated into KNOWSpot™ analysis 2) Results shared with police and public in summary form via KNOWShare™	1) Dashboard presentations and maps via intranet of police jurisdictions showing neighborhoods with high indicating factors 2) Dashboards include flashpoint definitions and associated schema a. Crosswalk between events and possible flashpoints b. Severity metrics and economic costs	1) Internet 2) Internet based systems presented at Town Hall sessions
Example of Results	A neighborhood might have a significant number of citizens that feel police are not responsive and supportive, while police may feel that neighborhood is well served or is not a priority	1) Show hot-spot type map (but not heat map), showing crisper edges between neighborhoods 2) Neighborhood alert distributions	1) Website, Facebook, Twitter, and other social media channels are routinely and frequently updated and monitored 2) Program success analytics and measures

*Expected Time Frames: **Immediate actions** reflect recommendations that can be implemented quickly, with a level of urgency and that will produce measurable results on which other recommendations will be built. Actions would begin within 30 days of notice to proceed and will be ongoing.

Mid-term actions support those recommendations requiring some development of technology and implementation of findings identified during the first phases of the process. Mid-term actions will overlap with immediate actions and will be agile in creation and deployment. Actions would begin within 60 - 90 days of notice to proceed.

Long-term actions are transformational and will have both broad and sustainable impact. These actions lead to positive cultural change that ultimately will be administered and maintained by both law enforcement and the communities they server. Long-term actions will overlap with mid-term actions and will include comprehensive data analysis, mapping and outreach activities. Actions would begin when sufficient information is gathered from Mid-term actions but not later than 12 months of notice to proceed.

Attn: President's Task Force on 21st Century Policing
U.S. Department of Justice
145 N Street, N.E. 11th Floor
Washington, DC 20530

Re: Prosecutors Are Hopelessly Conflicted From Prosecuting "Their Own"
Police

From: The Ethics Bureau at Yale

Date: February 24, 2015

I. INTRODUCTION

The Ethics Bureau at Yale, a clinic composed of seventeen law school students supervised by an experienced practicing lawyer and lecturer, drafts amicus briefs in cases concerning professional responsibility; assists defense counsel with ineffective assistance of counsel claims relating to professional responsibility; weighs in on cases of judicial and prosecutorial misconduct; and offers ethics advice and counsel on a pro bono basis to not-for-profit legal service providers, courts, and law schools.

The Ethics Bureau submits this memo to identify and explain the inevitable ethical issues that arise when a lawyer undertakes the possible prosecution of a police officer in her own jurisdiction (hereinafter a “local police officer”). Such prosecution poses a profound conflict of interest for the prosecutor and thereby undermines the competence, integrity and legitimacy of the prosecution. The Ethics Bureau submits this memo because it believes that such conflicts of interest not only damage the integrity of the proceedings at issue, but also undermine public confidence in the legal system. It is past time that the present system of criminal prosecution of police officers should be changed.

II. THE FIDUCIARY DUTY OF LOYALTY, CONFLICTS OF INTEREST, AND PROSECUTORS

The rules of professional conduct and other substantive law governing lawyers aim to increase public confidence in the rule of law and the justice system, thereby promoting the functioning and vitality of our constitutional democracy. These rules and laws recognize that the administration of justice requires legal representation free from conflicts of interest that compromise a lawyer’s competent and diligent representation.

Loyalty is the most basic of the lawyer’s fiduciary duties from which grows the prohibition against concurrent conflicted representation.¹ This prohibition is enshrined in the common law, embraced by the rules of professional conduct, and codified in the

¹ Strickland v. Washington, 466 U.S. 668, 719 (1984).

Restatement of the Law Governing Lawyers, the three primary sources governing lawyer professional responsibility. State rules, which are modeled on the current Model Rules of Professional Conduct,² may vary in their particulars but are unanimous in condemning concurrent conflicts of interest.

A lawyer's breach of the duty of loyalty is worse than other ethical breaches, not only because it is a breach of the most fundamental duty owed to a client, but also because it is the duty all others depend upon: once the duty of loyalty is breached, the integrity of the entire representation is undermined.³ A conflict of interest affects invisibly every decision in the representation. Depending on the conflict and the representation, this breach can blunt a lawyer's advocacy, undermine a lawyer's independent professional judgment, and inhibit a lawyer's creativity and zeal.

Conflicts of interest in the prosecution of those accused of criminal conduct raise particular concerns. A prosecutor owes to the sovereignty duties of competence and loyalty to zealously assert the state's interest in the adversarial criminal justice system. Thus, a prosecutor "should avoid a conflict of interest with respect to his or her official duties" and "should not permit his or her professional judgment or obligations to be affected by his or her own political, financial, business, property, or personal interests."⁴ Because the prosecution's client is the state,⁵ the public interest in avoiding situations where prosecutors operate under conflicts of interest that undermine their loyalty and independence is particularly pressing.

A prosecutor is unlike almost any other lawyer in that a prosecutor is vested with "the responsibility of a minister of justice."⁶ The Supreme Court has "long emphasized that a representative of the United States Government is held to a *higher* standard of behavior."⁷ This recognition is based on the fact that "[t]he United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and

² The prohibition on concurrent conflicts of interest is articulated in Rule 1.7 of the Model Rules of Professional Conduct. Rule 1.7 prohibits a lawyer from engaging in a legal representation in which the representation of one client is directly adverse to another, or when the representation "will be *materially limited* by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer." MODEL RULES OF PROF'L CONDUCT R. 1.7(a) (2011).

³ Lawrence Fox, *The Gang of Thirty-Three: Taking the Wrecking Ball to Client Loyalty*, 121 YALE L.J. ONLINE 567 (2012), <http://yalelawjournal.org/forum/the-gang-of-thirty-three-taking-the-wrecking-ball-to-client-loyalty>.

⁴ ABA CRIMINAL JUSTICE STANDARDS: PROSECUTION FUNCTION, 3-1.3(a) and (f).

⁵ *E.g.* Berger v. United States, 295 U.S. 78, 88 (1935).

⁶ MODEL RULES OF PROF'L CONDUCT R. 3.8 *cmt.* 1 (2011).

⁷ United States v. Young, 470 U.S. 1, 25 (1985).

whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.”⁸

Because of the special decisions prosecutors make in upholding justice, some of the same standards governing impartiality and the appearance of impartiality that apply to judges should extend to prosecutors. Just as judges act on behalf of the government, the Supreme Court has recognized that “the prosecutor’s opinion carries with it the imprimatur of the Government.”⁹ As a result, we can look instructively to circumstances governing judicial conflicts of interests to better understand how prosecutors can avoid similar problems. Canon 2 of the Judicial Code of Conduct provides that judges should avoid not only impropriety, but also the *appearance* of impropriety, in all proceedings.¹⁰ This Canon further provides that a judge should not allow outside influences to impact her judicial conduct or judgment.¹¹ The reasoning underlying this Canon is that the appearance of impropriety, even where impropriety may not in fact be present, erodes public confidence in the judicial system itself.¹² Even where we think judges can act as disinterested and impartial decisionmakers, we ask them to recuse themselves when the public could perceive a judge’s “family, social, political, financial, or other relationships” as influencing that judge’s conduct.¹³

A prosecutor operating under a conflict of interest has no place in, and is contrary to, the administration of justice. Prosecutors ought to avoid not only impropriety, but also the appearance of impropriety in considering the prosecution of police officers. In particular, the importance of a prosecutor’s special role can be seen as heightened at the indictment stage of a grand jury proceeding against a police officer because of the importance of the prosecutor’s view of probable cause and the public’s view of the prosecutor as an arbitrator of justice.

III. CONFLICTS ABOUND WHEN LOCAL PROSECUTORS ARE ASSIGNED TO THE PROSECUTION OF LOCAL POLICE OFFICERS

Although they may have the best intentions, prosecutors are almost certainly burdened with conflicting interests and even unperceived biases when investigating local police officers.

Prosecutors’ relationships with the police are symbiotic, with prosecutors and police depending on one another to accomplish their respective roles. On the one hand,

⁸ *Berger v. United States*, 295 U.S. 78, 88 (1935).

⁹ *United States v. Young*, 470 U.S. 1, 29 (1985) (internal quotation marks omitted).

¹⁰ MODEL CODE OF JUDICIAL CONDUCT, Canon 2 (2010).

¹¹ *Id.* at 2A.

¹² *Id.*

¹³ *Id.* at 2A-B.

the police rely on prosecutors as advisors and trainers. As police advisors, prosecutors are obligated to “provide legal advice to the police concerning police functions and duties in criminal matters.”¹⁴ As police trainers, prosecutors must “cooperate with police in providing the services of the prosecutor’s staff to aid in training police in the performance of their function in accordance with law.”¹⁵

When prosecutors provide advice, both individual police officers and their local departments may be seen as their implied or quasi-clients. Although a prosecutor does not expressly agree to represent the police officers or the department to whom they give advice, an implied fiduciary relationship may still attach where a prosecutor provides legal advice and the police reasonably rely on that advice.¹⁶ Even if an attorney-client relationship is not formed, a prosecutor could reasonably owe the police the same duties lawyers owe to a prospective client: confidentiality, competence, and conflict of interest resolution.¹⁷

On the other hand, prosecutors rely on the police as investigators and expert witnesses, and prosecutors are sometimes responsible for the actions of the police. A “prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.”¹⁸ This is, in part, because courts will presume “[a prosecutor has] knowledge of all information gathered in connection with his office’s investigation of the case,” including information gathered by the police.¹⁹

As a result, the relationship between state prosecutors and the police officers in their jurisdiction is complex. Police officers are not quite co-workers, agents, or clients of the prosecutors who handle their cases. Yet elements of each of these types of conflict-creating associations are present in the unique relationship between police and prosecutors.

a. Prosecutors and Police Officers As Co-Workers

First, prosecutors depend on local police departments to build the elements of their case, importing into their association the elements of a co-worker relationship. Police officers conduct the beginnings of investigations with minimal input from prosecutors, responding to initial reports of criminal activity, canvassing the community for information, securing the crime scene and gathering evidence, and interviewing

¹⁴ ABA CRIMINAL JUSTICE STANDARDS: PROSECUTION FUNCTION, 3-2.7(a).

¹⁵ *Id.* at 3-2.7(b).

¹⁶ RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 14(1)(b), 51(2) (2000).

¹⁷ *Id.* at § 15.

¹⁸ *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

¹⁹ *United States v. Avellino*, 136 F.3d 249, 255 (2d Cir. 1998).

witnesses.²⁰ Once a suspect has been identified, police departments often collaborate with prosecutors on both pre-arrest and post-arrest measures,²¹ including obtaining search and arrest warrants, interrogating suspects, and conducting eyewitness confrontations. Should the case proceed to trial, prosecutors rely on police officers to testify as witnesses, especially at suppression hearings and in the prosecutor's case-in-chief.²²

At each stage of this process, prosecutors depend on police officers to work diligently and within constitutional strictures to successfully prosecute their cases. Without the police, prosecutors simply could not do their jobs. Thus, "prosecutors often find themselves reluctant to alienate police officers [P]rosecutors may reject any inclination . . . to insist on better police practices overall, in an effort to get along with police in the short term."²³ Furthermore, prosecutors' ongoing dependence on law enforcement also makes prosecutors hesitant to take action that would "jeopardize their relationships with their colleagues" in the long-term.²⁴

Prosecutor-police interactions do not constitute legally recognized principal-agent relationships, because prosecutors do not direct police actions.²⁵ But this legal reality only exacerbates the dependence problem. Because prosecutors do not formally supervise police behavior, their influence over police conduct and investigations derives from the maintenance of collegial and trusting professional relationships with law enforcement. Prosecutors' "final authority over prosecutions hardly puts the prosecutor in a position comparable to a supervisory official," because "police are not always interested in obtaining a prosecution"²⁶

Thus, in order to fulfill their case-to-case duties and therefore to advance their own careers, prosecutors depend on police officers to a substantial degree. Consequently, when a police officer is being prosecuted, there is a "significant risk" that the prosecutor in the police officer's jurisdiction "will be materially limited . . . by a personal interest" under Model Rule of Professional Conduct 1.7(a)(2)—namely, an interest in maintaining good working relationships and preserving trust with the police officers in her jurisdiction, because the prosecutor relies on these relationships to do her job competently. A prosecutor in this situation can foresee the deleterious consequences of

²⁰ David A. Harris, *The Interaction and Relationship Between Prosecutors and Police Officers in the U.S., and How This Affects Police Reform Efforts*, U. OF PITTSBURGH LEGAL STUDIES RESEARCH PAPER NO. 2011-19, 1, 2 (June 2011).

²¹ Caleb Mason, *The Police-Prosecutor Relationship and the No-Contact Rule: Conflicting Incentives After Montejo v. Louisiana and Maryland v. Shatzer*, 58 CLEV. ST. L. REV. 747, 770 (2010).

²² Harris, *supra* n. 20, at 2.

²³ *Id.*

²⁴ *Id.* at 2-3.

²⁵ 1 CRIM. PROC. § 1.4(c) (3d ed.) (December 2014).

²⁶ *Id.*

prosecuting the police officer; even if the prosecutor felt she could maintain professional objectivity, it would only be human nature for the prosecutor to approach this task with some reluctance. When prosecutors are tasked with prosecuting police officers, the incentive structure underlying such situations mirrors those of other circumstances in which courts have not hesitated to sanction lawyers on conflict-of-interest grounds.²⁷

The Supreme Court has acknowledged the close working relationships between prosecutors and police officers by recognizing that police officers and district attorneys are “part of the prosecution team.”²⁸ In *Messerschmidt v. Millender*, the Court rejected the notion that approval by a state prosecutor could supply dispositive proof of the validity of a warrant.²⁹ Justice Kagan explained the Court’s reasoning: “[O]ther police officers or state attorneys . . . are ‘part of the prosecution team.’ To make their views relevant is to enable those teammates (whether acting in good or bad faith) to confer immunity on each other”³⁰ If prosecutors cannot be trusted to act as an independent check on police conduct in one area, we should be skeptical of placing faith in their abilities to do so in prosecuting officers within their jurisdiction.

b. Prosecutors and Police Officers Form Close Personal Relationships

Second, the frequent collaboration between police and prosecutors often creates a collegial environment in which officers and attorneys form friendships. This is problematic when police officers are the subjects of prosecution; conflicting interests that tug at a prosecutor’s conscience when she must prosecute an officer are further exacerbated by bonds of loyalty that the prosecutor forms with local police officers

The frequency of repeated interactions between particular prosecutors and police officers depends on the size of the jurisdiction and the specialization of the individuals involved. In many prosecutorial districts encompassing several police departments, lawyers are unlikely to form close professional relationships with individual police

²⁷ Take for example *In re Holmes* where the Supreme Court of Oregon found an improper conflict of interest because a plaintiff’s attorney had a 25% interest in the defendant corporation, subsequently upholding a public reprimand of the plaintiff’s attorney. 619 P.2d 1284 (Or. 1980). It is clear from this fact pattern that the lawyer’s personal interest in the financial wellbeing of the defendant corporation almost certainly had some effect on her zealotry and vigor in representing the plaintiff, specifically because the lawyer had a financial stake in the defendant corporation. Prosecuting police officers presents an analogous scenario; if a prosecutor relies to a substantial degree on her working relationships with police officers to do her job, then she has a professional, if not a financial, stake in maintaining these working relationships. It is difficult to see why prosecutors in these situations are not deemed to suffer from an improper conflict of interest as well.

²⁸ 132 S. Ct. 1235, 1249 (2012).

²⁹ *Id.*

³⁰ *Messerschmidt v. Millender*, 132 S. Ct. 1235, 1252 (2012) (Kagan, J., concurring in part and dissenting in part) (citations omitted).

officers.³¹ However, two factors mediate against such anonymity. First, in many areas, particular crimes receive the exclusive attention of a subset of prosecutors and detectives, especially in homicide cases.³² These individuals work together frequently and engage in “full and frank discussions about case strategy.”³³ Second, many prosecutors’ offices are moving towards a community-oriented model of prosecution.³⁴ “As a result, prosecutors may assign deputies to work with the police in precinct stations or neighborhood offices, focusing upon specific geographical areas; create bureaus or teams to carry out vertical prosecution and to handle all cases (even screening) from an area; and set up community prosecution sections and units.”³⁵ Many jurisdictions have increased their efforts to develop “deep working relationships between prosecutors and police.”³⁶

These repeated collaborations create ties of friendship between individuals and can cultivate ties of loyalty between offices. On an interpersonal level, these feelings of loyalty can cause prosecutors to sympathize with officers and sometimes overlook transgressions. Writing for the *New York Times*, Paul Butler, former prosecutor and professor at Georgetown University Law Center, observes, “[P]rosecutors see the same cops over and over, and they bond with them. It’s not so much that they excuse egregious misconduct as that they cast a blind eye.”³⁷

To the extent that prosecutors and police officers form friendships while working together, the additional (and independent) effect that these friendships likely will have on a prosecutor’s diligence and zealotry in prosecuting a police officer is easy to understand. Put simply, it would be difficult for anyone to argue that a friend should go to jail, but it would be even more difficult if you relied on that friend to succeed at your profession.

³¹ Norman Abrams, *The Distance Imperative: A Different Way of Thinking About Public Official Corruption Investigations/prosecutions and the Federal Role*, 42 LOY. U. CHI. L.J. 207, 216 (2011).

³² Ctr. on the Admin. of Criminal Law, *Establishing Conviction Integrity Programs in Prosecutors’ Offices* (2012), available at http://www.law.nyu.edu/sites/default/files/upload_documents/Establishing_Conviction_Integrity_Programs_FinalReport_ecm_pro_073583.pdf, 35.

³³ *Id.* at 35-36.

³⁴ M. Elaine Nugent-Borakove and Patricia Fanflik, *Community Prosecution: Rhetoric or Reality?*, in *THE CHANGING ROLE OF THE AMERICAN PROSECUTOR*, 211, 216-217 (John L. Worrall and M. Elaine Nugent-Borakove, eds., 2008).

³⁵ Catherine M. Coles, *Evolving Strategies in 20th-Century American Prosecution*, in *THE CHANGING ROLE OF THE AMERICAN PROSECUTOR*, 177, 194 (John L. Worrall and M. Elaine Nugent-Borakove, eds., 2008).

³⁶ Ctr. on the Admin. of Criminal Law, *supra* n. 32.

³⁷ Paul Butler, *The System Must Counteract Prosecutors’ Natural Sympathies for Cops*, NY TIMES (December 4, 2014), <http://www.nytimes.com/roomfordebate/2014/12/04/do-cases-like-eric-garner-require-a-special-prosecutor/the-system-must-counteract-prosecutors-natural-sympathies-for-cops>

c. Police Officers Are Akin to Clients of Prosecutors or, At the Least, Are Agents of the Prosecutors' Client

Prosecutors' role in advising police departments establishes an association that is similar to an attorney-client relationship. Prosecutors both provide legal advice to officers on case-by-case decisions – for example, whether probable cause exists³⁸ – and on more general constitutional limitations on police investigations.³⁹ As with other attorney-client relationships, the police officers' trust in the strength of their relationship with the prosecutors' office is crucial in ensuring that the legal advice is well-received. “The quality of the police-prosecutor relationship in a jurisdiction is critical to the ability of the prosecutor to effectively monitor . . . flawed lineups and other improper witness identification procedures, illicitly obtained confessions, improper use of informants, legally invalid searches, and faulty processing of physical and forensic evidence.”⁴⁰

Some courts have even recognized the existence of an attorney-client privilege between prosecutors and police officers in the context of civil tort actions against law enforcement agents. The United States District Court for the Eastern District of Pennsylvania held that because the “District Attorney’s ‘client’ is the Commonwealth of Pennsylvania” and “the Attorney General represents the Commonwealth and all Commonwealth agencies,” “an attorney-client relationship existed” between those offices and a police officer who “sought legal advice as a client of both lawyers.”⁴¹

Model Rule 1.7 does not allow the concurrent representation of two directly adverse clients. If the state is the prosecutor’s chief client, but police officers can be implied clients, a prosecutor cannot prosecute a police officer without violating Model Rule 1.7.

Even if police officers are not considered the clients of a prosecutor, a material conflict still exists. The state is the client of the prosecutor.⁴² When a prosecutor prosecutes a police officer, she is prosecuting the agent of her client. The prosecutor owes a duty of loyalty to the state, and thus its agents when she acts within the scope of her authority. She cannot both work for the state who employs the police officer and effectively charge the police officer without creating a conflict of interest.

³⁸ John C. Jeffries, Jr., *The Liability Rule for Constitutional Torts*, 99 VA. L. REV. 207, 222 (2013).

³⁹ Mason, *supra* n. 21, at 771.

⁴⁰ Brian Forst, *Prosecution Policy and Errors of Justice*, in *THE CHANGING ROLE OF THE AMERICAN PROSECUTOR*, 51, 55 (John L. Worrall and M. Elaine Nugent-Borakove, eds., 2008).

⁴¹ *Bare v. Cruz* 2012 WL 1138591, at *4 (E.D. Pa. Apr. 2, 2012) (citations omitted). *But see* *Amili v. City of Tukwila*, 2014 WL 3404572 (W.D. Wash. 2014); *Sampson v. Schenck*, 2009 WL 484224, at *8 (D. Neb. 2009).

⁴² *Berger v. United States*, 295 U.S. 78, 88 (1935).

The client—the state—is inchoate, and thus the prosecutor’s representation of her client most closely parallels a lawyer’s representation of an organization, which is done “through [the organization’s] duly authorized constituents.”⁴³ Comment 9 to Rule 1.13 specifically notes that a government agency shall be considered an organization for the purposes of applying the duties laid for in Rule 1.13. While a lawyer can also represent the authorized constituents of an organization, she may only do so if it does not create a conflict of interest under Rule 1.7. However, Rule 1.7(b)(2) prohibits representation of two clients when the representation involves “the assertion of a claim by one client against another client represented by the lawyer in the same litigation.” A prosecutor acts as the lawyer for the state, and when prosecuting police officers, they are “asserting a claim” against agents of their client, creating a situation specifically prohibited by Rule 1.7(b)(2).

This conflict of interest can better understood by a comparison to the corporate structure. Both police officers and prosecutors are agents of the same organization, the state. They are agents acting with different authority toward the same end goal. Following the corporate structure analogy, if police officers are analogous to a corporation’s product development team, prosecutors can be seen as analogous to the business executive branch of a corporation. Similar to how product developers and business development sectors work together to bring success to a corporation, police and prosecutors work together to fulfill the state’s objectives in preserving justice. As such, police officers are pivotal in assuring the state achieves its goals as they are identified by the prosecution. There is no way for a prosecutor to effectively do her job when acting against another agent of the same institution. She cannot both promote the general interests of the organization while working against another branch of the institution.

This comparison with the corporate structure is imperfect, as the nature of the relationship between prosecutor and police officer is unique. Yet the power of the analogy remains: the two different agents work together to further the ends of their organization, namely the effective prosecution of crimes. One agent acting in the scope of her authority cannot work against another agent of an organization; this creates a material limitation on the prosecutor’s ability to represent her client. The material limitations arising from a lawyer’s responsibility to another client constitute an unwaivable conflict of interest prohibited by the Model Rules.⁴⁴

d. Police Officers Are Expert Witnesses for the Prosecutors

In addition to rendering services to the police, prosecutors also depend on the police to successfully complete criminal investigations and proceedings. Aside from their investigatory assistance, the police function as both ordinary witnesses and expert witnesses at trial. Prosecuting an officer who previously acted as an expert witness for the prosecutor, or one who is likely to act as one in the future, is likely to pose three serious

⁴³ MODEL RULES OF PROF’L CONDUCT R. 1.13(a) (2011).

⁴⁴ MODEL RULES OF PROF’L CONDUCT R. 1.7(a)(2) (2011).

conflicts. First, it presents a tension between the prosecutor's duty of loyalty to the state against her feelings of loyalty to her expert witness. Second it risks compromising the confidentiality of information obtained by the prosecutor in earlier dealings with the police. Third, it pits the prosecutor's professional aspirations against her ability to effectively represent the state.⁴⁵

Police officers are highly important to the success of a prosecutor's individual cases, as well as her overall career prospects. As Butler emphasizes, "[Y]ou need [the police] to help you make your cases (every prosecutor has experienced having a police officer catch an attitude, sometimes in the middle of a trial, and purposely ruin your case because they don't like you)... [P]rosecutors are competitive and ambitious and the way you move ahead is to win your cases, and the way you win cases is get your star witnesses – the cops – to go the extra mile."⁴⁶ Butler's observations, while not establishing a pattern of behavior, provide insight into the significant *potential* for police officers to play a pivotal role in the success of individual cases, which can ultimately affect the professional prospects of prosecutors.

The fact that the police function as both quasi-clients and witnesses of prosecutors is problematic. This problem is further exacerbated when prosecutors consider pressing charges against police officers who may have previously served as both. The American Bar Association counsels against this type of conflict: "A lawyer who in the course of representing a client examines another client as an adverse witness in a matter unrelated to the lawyer's representation of the other client, or conducts third party discovery of the client in such a matter, will likely face a conflict that is disqualifying in the absence of appropriate client consent."⁴⁷

As such, contemplating a prosecution of a police officer who previously served as an expert witness for the prosecutor or one who might serve as such a witness in the future constitutes a material limitation on the prosecutor's representation, a situation prohibited by Model Rule 1.7(b).⁴⁸ Any police officer who shares a jurisdiction with the prosecutor is such a potential witness. As such this is a situation where the "substantial personal interests which conflict with the clear objective of his representation of [one] client" mean that the prosecutor "is actively engaged in legal representation which requires him to account to two masters."⁴⁹

⁴⁵ LAWYER EXAMINING A CLIENT AS AN ADVERSE WITNESS, OR CONDUCTING THIRD PARTY DISCOVERY OF THE CLIENT, ABA Formal Op. 92-367 (hereinafter "Opinion 367").

⁴⁶ Butler, *supra* n. 37.

⁴⁷ Opinion 367, *supra* n. 45.

⁴⁸ *Id.*

⁴⁹ United States v. Tatum, 943 F.2d 370, 376 (4th Cir. 1991).

IV. WHEN PROSECUTORS PROSECUTE POLICE OFFICERS FROM THE SAME JURISDICTION THEIR INCENTIVES ARE ALL WRONG

The work of police and prosecutors is intimately intertwined. Their working relationship is an ongoing, rather than episodic, relationship. Prosecutors have a vested professional and personal interest in maintaining a strong relationship not only with each individual police officer with whom they work with, but with entire police departments as a whole. A damaged relationship could undermine the prosecutor's ability to press charges and secure convictions in individual cases, which could ultimately damage the prosecutor's career.

Because of the ongoing working relationship between prosecutors and police, there is cause for significant concern when the interests of these two groups diverge. In analyzing conflicts of interest, "[t]he critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client."⁵⁰ Where a local prosecutor prosecutes a local police officer, there is an impermissible, unwaivable concurrent conflict of interest: this situation provides a *significant risk* that the prosecution will be materially limited by the prosecutor's relationship with the local police and the prosecutor's personal interests.⁵¹

A prosecutor's ability to consider or to recommend pressing charges against a local police officer, regardless of whether that individual police officer was someone with whom prosecutor had previously worked, is materially limited. Any individual police officer could know others with whom the prosecutor had worked, was currently working with, or would work with in the future. The prosecutor's conflicting desires to act in the state's interests in prosecution and to avoid undermining future prosecutions by hurting the prosecutor's relationship with the police could limit the prosecutor's ability to consider all possible courses of action or to weigh evidence appropriately.

The Supreme Court has found that a significant conflict of interest arises when a lawyer's "interest in avoiding damage to [his] own reputation is at odds with his client's strongest argument," which, in the case of prosecuting police officers, could be pressing charges itself.⁵² A lawyer cannot be expected to make arguments that could threaten his or her professional reputation and therefore his or her livelihood.⁵³

⁵⁰ MODEL RULES OF PROF'L CONDUCT R. 1.7 *cmt.* 8 (2011).

⁵¹ *See Id.* at 1.7(a)(2).

⁵² *Christeson v. Roper*, 135 S.Ct. 891 (2015) (internal quotation marks omitted)

⁵³ *Id.*

Prosecutors may not even be consciously aware of the impediments these conflicts pose. Research has shown that lawyers “systematically understate both the existence of conflicts and their deleterious effects.”⁵⁴

Nonetheless, the public can perceive this conflict, and subsequently perceive the prosecutorial process as infected with bias. The public may conclude that it cannot trust the outcome of an individual case, nor all future cases where local prosecutors prosecute police. “The dynamics of litigation are far too subtle, the attorney’s role in that process is far too critical, and the public’s interest in the outcome is far too great to leave room for even the slightest doubt concerning the ethical propriety of a lawyer’s representation in a given case.”⁵⁵ Thus, the state and courts “have an independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them,” which entails an independent interest in ensuring local prosecutors do not prosecute local police.⁵⁶

V. CONCLUSION

There are widely publicized debates about who ought to investigate and prosecute police officers when there is suspicion of police misconduct. Some posit that this ought to be the role of special outside prosecutors, others demand federal prosecutors, and others simply ask for prosecutors from adjacent local jurisdictions. It is beyond our expertise to propose an affirmative solution to this problem. Our aim is simply to demonstrate how problematic it is for a prosecutor to be tasked with the job of prosecuting a police officer from her own jurisdiction.

The incentives for a prosecutor, when investigating and ultimately charging a police officer from an office with which the prosecutor works, are deeply misaligned. The prosecutor’s client is the state, and her job is to carry out justice by assiduously investigating wrongdoing and bringing criminal charges when there is sufficient evidence of such wrongdoing. However, when a local police officer is the target of the prosecutor’s investigation, the prosecutor has deep-seated incentives to protect such an officer. As described above, the prosecutor relies on the officer, or at least the officer’s colleagues, at every stage of her job.

Furthermore, the problem here is deepened by the unfettered discretion prosecutors have. It is nearly impossible to sue a prosecutor for wrongdoing because of

⁵⁴ Tigran W. Eldred, *The Psychology of Conflicts of Interest in Criminal Cases*, 58 U. KAN. L. REV. 43, 48 (2009).

⁵⁵ *Emle Indus., Inc. v. Patentee, Inc.*, 478 F.2d 562, 571 (CA2 1973).

⁵⁶ *Wheat v. United States*, 486 U.S. 153, 160 (1988).

their sovereign immunity, and prosecutors are almost never disciplined for questionable behavior.⁵⁷

The good faith of a prosecutor cannot alleviate the harm of a conflict. The prohibition in every state bar on conflicts of interest demonstrates this. The rules preventing lawyers from working under a conflict of interest are structured objectively because a conflict can infect every decision made during the course of a representation, undermining the lawyer's loyalty to his client.

Such concerns are particularly acute in the context of prosecuting police officers. The public has a deep and abiding interest in keeping law enforcement's behavior within the bounds of the law. The public today recognizes that a local prosecutor cannot diligently prosecute a local police officer; the close working relationship between law enforcement and prosecution undermines the possibility of a diligent prosecution and thereby lends a grave image of partiality to the justice system when such prosecution occurs.

Respectfully Submitted,

The Ethics Bureau at Yale

Lawrence J. Fox, Supervising Lawyer

⁵⁷ Center for Prosecutor Integrity, *Qualified Immunity: Striking the Balance for Prosecutor Accountability* (2014), <http://www.prosecutorintegrity.org/wp-content/uploads/2014/09/Qualified-Immunity.pdf>.

President's Task Force on Policing in the 21st Century
Office of Community Oriented Policing Services
U.S. Department of Justice
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POLICY & OVERSIGHT LISTENING SESSION:

**The Challenges of Oversight & Public Accountability in the Department of Justice's (DOJ)
Office of Community Oriented Policing Services & Local Police Departments**

Statement written by Allen Kwabena Frimpong, Activist
on the behalf of the Malcolm X Grassroots Movement:
New York People's Self Defensive Campaign

February 25th 2015

Task Force Members:

The Malcolm X Grassroots Movement (MXGM) is an organization of Afrikans in the United States (people of African descent- Black, Afro-Latino/Caribbean) whose mission is to defend the human rights of our people and promote self-determination in our community.

For 15 years, MXGM has been a leader in the work to end racial profiling and police brutality through community organizing, advocacy, policy change, class action litigation, Know Your Rights Workshops, and CopWatch patrols. Our organizing work includes co-founding Peoples Justice 2000, a citywide coalition which led mass protests ultimately resulting in the indictment of the police officers who killed Amadou Diallo by shooting at him 41 times and the closing of the infamous Street Crimes Unit. Today, we sit on the steering committee of Communities United for Police Reform (CPR), a coalition of more than 60 diverse organizations from communities throughout New York City working to reform policing and stem system police brutality and violence. CPR led the 2013 campaign to pass the Community Safety Act, landmark legislation which resulted in the appointment of NYC's first Inspector General and strengthen penalties for police racial profiling.

Several of our volunteers and leaders, including Djibril Toure, David Floyd, and Lalit Clarkson were plaintiffs in two successful lawsuits to reform policing in New York City, *Daniels vs. NYC* and *Floyd vs. NYC*, which resulted in the landmark decision finding Stop and Frisk, as it was being practiced by the NYPD, unconstitutional.

MXGM has also co-founded NY's CopWatch Alliance. A network of organizations and individuals trained to monitor, document, and prevent police misconduct and brutality in our communities and educate people about their rights during police interactions. In 2014, we trained nearly 1000 people and organizations on Know Your Rights and CopWatch. Ultimately, we provide legal and organizing support for families of victims of police brutality.

Issue

In this statement, we will highlight the beliefs, tactics, and strategies, that create an organizational culture in our law enforcement and judicial system that allows for cases of police brutality to go unprosecuted or get tried unjustly. We are witnessing non-indictments of police officers in predominantly black communities where state-sanctioned killings occur every 28 hours in the United States. This statistic has been widely used since the murder of Trayvon Martin in 2012, and it comes from our national report, *Operation Ghetto Storm: 2012 Annual Report on the Extrajudicial Killing of Black People*. We will also detail how this culture has contributed to challenges in our efforts to create public accountability mechanisms for police departments through civilian and federal oversight of police misconduct. At a federal level we will discuss how a lack of rigor in oversight and reporting from local police departments has led to insufficient data on the extrajudicial killings of black people in the United States.

Policy Implications

Racism and Structural Barriers that influence Police Culture: Our report *Operation Ghetto Storm*, dispels the myth that the United States is in living in a post-racial society. The report highlights the black men, women, and children who have been killed at the hands of police and security officers, along with civilian vigilantes. In addition, the report looks at the ample evidence of police practices that result from:

1. Racial bias and beliefs around suspects being seen as threatening that result in acts of police misconduct. 47% of the extrajudicial killings that occurred among Black people were justified by the state, with a variety of reports that end with them “having no choice but to use deadly force to defend themselves or others.” It is difficult to know the extent to which they actually believe their rationalizations but it is clear that these justifications are deeply rooted in racism and barter in racial stereotypes and dehumanization. These are reduced to accusations that they “felt threatened”; as a result, criminalizing dead black bodies.
2. The close collaboration between police and prosecutors, which is a benefit in homicide investigations, becomes a burden in police shooting cases. In most cases, the prosecutors’ reliance on the cooperation of police creates a fundamental conflict of interest. As a result, prosecutors are often reluctant to assertively pursue these cases, and in recent cases throwing them to a grand jury.
3. Jury bias that results in racially disparate criminal justice outcomes, including no convictions of officers committing extrajudicial killings, false convictions, application of the death penalty, and non-violent drug related convictions of black people.

The presence of implicit bias and racism produce a culture of reckless endangerment where police are not held accountable for police misconduct and brutality which fortifies the structural and institutional barriers that exist in our law enforcement and judicial system. Local police departments

and their officers are hardly held accountable for these killings and even less frequently charged in a court of law. In most of the cases Black civilians who are killed by police are unarmed and/or have already been placed under arrest in handcuffs, as supposed to police who commit extrajudicial killings of Black people who are armed. In contrast, both the victims who survive and the perpetrators of “Black-on-Black” crime end up as part of the million Black people incarcerated in the U.S. at any given time, because of the incentive that police and prosecutors have in arresting, prosecuting, and incarcerating Black civilians. In the case of Kyam Livingston in New York City she was arrested after having an argument with her grandmother. While under police custody Livingston was in need of medical attention after experiencing seizures, and was ignored by police officers until it was too late. She died the following morning of July 21st 2013.

Civilian Oversight of Police Misconduct: *Floyd, et al. v. City of New York, et al.* is a federal class action lawsuit filed by two of our activist members David Floyd and Lalit Clarkson. With the support of Center for Constitutional Rights and other coalitions we filed a lawsuit against the New York City Police Department (NYPD) and the City of New York that challenges the NYPD's practices of racial profiling and unconstitutional stop-and frisks. These NYPD practices have led to a dramatic increase in the number of suspicion-less stop-and-frisks per year in the city, with the majority of stops in predominantly black neighborhoods in New York City. On August 12, 2013, a federal judge found the NYPD liable for a pattern and practice of racial profiling and unconstitutional stop-and-frisks in a historic ruling, and on January 30, 2014, the City agreed to drop its appeal, install a federal monitor from DOJ, and begin the joint remedial process ordered by the court in August of 2014 to restore community and police relations.

The Police Benevolent Association (PBA) of New York City has also attempted to make appeals to the joint remedial process and the court has blocked their appeals. The PBA has also provided obstacles for NYC Civilian Complaint Review Board (CCRB) to prosecute police officers involved in incidents of police brutality; Furthermore, in the majority of the cases of misconduct, the NYPD has not taken the CCRB's recommendations into consideration for reform of police practices within their department, and have obstructed police reforms as a point of leverage to renegotiate their union contract with the city government.

Across the Hudson River, in Newark, NJ another major city recently installed a DOJ federal monitor after a federal audit conducted by DOJ found that officers routinely engaged in excessive force and violated citizens' constitutional rights. Last week, the mayor called for the implementation of a Civilian Complaint review board which came under fire from the local Fraternal Order of Police and the President of the Newark's Superior Officer's Association stated, “The police director is civilian oversight of the police department, Police misconduct has to be investigated at the police level.”

This pattern of appeals instigated by city police departments and unions comes from a belief stemming from a culture that allows for them to be unaccountable to the public and to remain immuned from civilian oversight. There is an underlying belief about 'civilians' and their ability to

judge or even discern police officers' conduct that informs the current local, state, and federal policies and practices that keep from having a CCRB for instance, form with subpoena power in the first place.

Federal Reporting & Collection of Extrajudicial Killings Data: The Office of Community Oriented Policing Services (COPS) at DOJ purports to be committed to furthering crime analysis through the funding of community policing officers, resources, training, and technical assistance. The office partners with law enforcement, businesses and other Federal agencies to enhance policing activities and outcomes. The purpose of COPS is to ensure that police and community stakeholders partner in solving our nation's crime challenges especially in communities of color. Unfortunately, federal COPS program itself which provides financial support without sufficient oversight has contributed to the problem of over-policing via police militarization due to the lack of rigor in federal oversight and reporting from local police departments about their data locally.

In our report Operation Ghetto Storm, we discuss how there is no centralized database that keeps track of extrajudicial killings by police. In 2013, the Washington Post reported that with the data the FBI collects, that there were 461 'justifiable killings' at the hands of law enforcement officers. However, as the Justice Department notes, the reporting is not mandatory and not all police departments participate.

As a result, journalists and academics who independently study the issue believe the numbers are incomplete and say there are more than 1,000 such deaths each year. Despite the police departments receiving billions of tax dollars from federal programs, such as the COPS hiring program, there is still no requirement that mandates the police to submit data on the outcomes of our federal or local investment. In the past, because of lack of accounting local police departments were able to subvert their COPS funding to establish SWAT teams. This lack of accounting is by design. With no numbers, there can be no studies, no analysis of trends and no accountability. Nearly all homicides committed by police can be written off as "justified" as currently reported by the FBI.

Last year shortly after the killing of Mike Brown, Vonderrit Myers, and Kajieme Powell, St. Louis Metropolitan Police Department received a 1.8 million dollar grant from the COPS hiring program to hire 15 additional police officers, and proposed hotspot policing as their community oriented policing strategy. In their proposal, they describe the challenges of prosecuting violent offenders responsible for committing gun violence due to a lack of witness/victim participation and suggest that they want to partner with communities in efforts to identify, arrest, and prosecute the individuals responsible, and that hiring 15 new officers will help them achieve this through increased patrols in these high crime areas in St. Louis.

Given the recent shootings and protests in the St. Louis County area, how could DOJ COPS hiring program accept St. Louis Police Department's proposal using these practices? While it has been argued that hotspot policing is effective at reducing crime in neighborhoods, it is also responsible for

creating racial disparities in the amount of arrests happening in traffic and civilian stops across the United States.

Furthermore, St. Louis Police Department has erected a police foundation that solicits funds to the department to purchase resources such as, rifles, tasers, surveillance equipment and street survival training for police officers to name a few. Many police departments nationally are using charitable funds from individual major donors or major corporations to purchase resources that will not restore public safety, and the well-being of our children and families in our neighborhoods. The purchase of these resources are not made public and because they are purchased through a private entity there is no requirements for the police foundation to be held accountable via civilian oversight as well.

Federal Recommendations

Reform policies that dismantle barriers for adequate federal monitoring & data collection: While the federal government may set guidelines for local law enforcement agencies who receive federal funding for resources such as body worn cameras programs, under constitutional principles outlined in *Printz v. United States*, federal oversight and influence is significantly limited over resources like body worn camera programs that are not federally funded. We also call for the elimination of the *Police Bill of Rights* and the numerous civil service rules and judicial policies and procedures that give the police anonymity, freedom from having their behavior recorded and virtual immunity from accountability and prosecution.

Funding should be conditional based on reporting requirements met for police departments: DOJ COPS programs should require local police departments that are applying for funding to disclose their other sources of revenue, grants and donations that support the police departments work. In the case of St. Louis Police Foundation, they could be funding neighborhood public safety initiatives, youth programming, or even establish a fund to support the local police department with the collection of data. Additionally, when police departments talk about their community partnerships it should be a requirement for departments to allocate resources to be given towards social service agencies that can offer individuals who have been traumatized by police misconduct and brutality assistance rather than strictly having police deal with them and their families as a criminal encounter.

Better criteria should be created for funding community oriented policing strategies, especially in communities of color: Department of Justice should look to support a *National Plan of Action for Racial Justice* that will make the United States government compliant with all the norms and standards of the Convention on the Elimination of all forms of Racial Discrimination (CERD) on all levels that can inform the criteria for local community public safety reforms. Police strategies and community level interventions that reduce racial disparities that are evidence informed should be

the standard of the kinds of community oriented policing strategies that DOJ COPS should be funding on a local level to police departments

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THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING



The creation of the President's Task Force on 21st Century Policing is an important opportunity for all law enforcement officials and local leaders to reexamine current policies, tactics, training, and security officers' conduct while on-the-job. Charged with the directive to improve relations between local police and the communities in which they serve, this Task Force should be looking for innovative ideas and training methods to assist in attaining this goal.

SDR[®] Academy offers solutions to the voids in current security training methods.ⁱ SDR[®] provides the nuances in training, which are currently missing, while simultaneously building trust and legitimacy, implementing a new era of social media and technology, and providing the training and education needed for the current environment. SDR[®] Academy harnesses its unique methodology based on a blend of its composition of American, European, and Israeli employee backgrounds. The melding together of these nationalities affords the company a unique security perspective, drawing the very best knowledge from each individual's experience and expertise.

The following pages summarize our suggestions for the President's Task Force on 21st Century Policing, and brief explanations of how SDR[®] Academy can bring those suggestions to fruition.

SDR[®] PAST AND ONGOING PERFORMANCE

SDR[®] Academy has partnered with the Royal Dutch Military Police (KMar) at Schiphol Plaza located in Schiphol International Airport, Amsterdam Police, Dutch Railways, and Haga Hospital The Hague.ⁱⁱ

The SDR[®] collaboration with the KMar at Schiphol Plaza was awarded the 2009 Safety Security Amsterdam Project of the Year. The operational results of the first year of using SDR[®] in Schiphol Plaza were described in an official KMar memo, which can be accessed on our website.ⁱⁱⁱ SDR[®] was furthermore recognized for preventing discriminatory ethnic profiling in policing practices by the European Agency for Fundamental Rights in an official report, which can also be accessed on our website.^{iv}

SDR[®] Academy's sister company, ISCA, participates in several research and development projects funded by the European Union in order to improve the state of the art in practice and policy on the subjects of counter-violent-extremism and counter-terrorism.^{v,vi}

The experience and expertise of the SDR[®] Academy team has been recognized throughout the international policing and security domain, with invitations to speak at industry innovation events including the Future Security Conference^{vii}, UNICRI Enhancing Public Private Partnerships International Workshop^{viii}, the Workshop on Understanding De-radicalization: Pathway to Enhance Transatlantic Common Perception and Practices^{ix}, and more.

SUGGESTION 1: INNOVATIVE TRAINING TECHNIQUES THROUGH PREVENTION AND HEIGHTENED AWARENESS

SDR[®] is a security methodology that focuses on prevention rather than reaction. It offers proactive solutions rather than reactive ones. The proactive approach means that all measures are taken with the goal of preventing crimes or terrorist actions before nefarious events occur. Reactive

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methods on the other hand, cannot be harnessed until after an event has actually occurred or there is a crime in progress, leaving a gap in security measures in the time before a crime is actually committed. SDR[®] does not wait for an event to occur, rather SDR[®]-trained personnel identify key behavioral indicators that are based on a better understanding of one's surroundings and what constitutes normal or abnormal behaviors^x in a given environment.

- *The human factor:* Behavioral indicators should be the leading component of public safety practices and the driving force for how to identify potential threats to the community, rather than the potentially biased search for suspects.^{xi}
- *Prevention:* The key to safety and security is prevention. 21st Century Policing should focus on prevention, allocating more efforts and capabilities for the time before any harmful incident has occurred. SDR[®] training equips trainees with the operational tools needed in order to see the potential of a situation before an event occurs.
- *Awareness:* The key to prevention is awareness. Personnel need heightened awareness training of the highest quality in order to have a more comprehensive understanding of their environment, a broader scope and a deeper understanding of their observations. Heightened awareness of one's surroundings as well as a more nuanced awareness of what certain behaviors or actions mean in a particular environment are the essence of what SDR[®] training gives to those that learn the methodology and security protocols. With such awareness capabilities, trainees can see and understand the significance of given behaviors earlier, and therefore have a greater opportunity of preventing illicit actions ranging from minor crime to major crime and terrorism.
- *Knowing your environment:* Local factors are vitally important to consider while searching for abnormal behaviors, as typical or atypical behaviors shift with the changing environment. The local definition of normal(ity) changes in conjunction with fluctuating influential factors such as cultural norms, time of day, holidays, organized events, current events, etc. Understanding the environment in which you work, and having this be the driving force behind what defines your perception and knowledge of normal versus abnormal behavior, must be included into police and law enforcement security training. Making decisions and taking actions based on behavioral indicators relevant to the local environment counteracts natural human biases that can cause false positives, false negatives, and community tensions.^{xii}

SUGGESTION 2: NEGATING ETHNIC PROFILING IN POLICING THROUGH EFFECTIVE OPERATIONAL TOOLS AND METHODOLOGY

The current climate of policing in the United States with existing procedures and protocols has often led to systematic racial profiling and mistrust between minority communities and their local law enforcement officials. Inadvertent racial profiling can also occur in efforts to be proactive, but without adequate training.^{xiii} Security and safety for all should be preserved equally. Unfortunately, the current system lacks the nuanced training it needs to avoid inherent biases, and therefore, the collective community faith in the efficacy and fairness of our law enforcement officials continues to erode.^{xiv}

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- *Heightened Awareness:* Police should adjust their decision making and actions in accordance with the specific context, and not address each scenario with a one size fits all approach. SDR[®] training methodology heightens trainees' awareness of their surroundings and trains personnel to spot key behavioral indicators relevant to the local environment rather than searching for a general notion of a suspect, which may include racial and/or ethnic profiling.
- *Auto-critique tools:* Both the rights of the public and the confidence of the police forces need to be protected. SDR[®] training inherently negates ethnic profiling with auto-critique tools that ensure that officers are making knowledge-based decisions based on key indicators relevant to the environment. These SDR[®] auto-critique tools furthermore protect officers' decisions and allow them to act on their expertise and intuition with confidence, because with these tools they are able to substantiate their decisions and their actions.^{xv,xvi}
- *Building trust:* An environment of mutual respect and communication should be established between the community and law enforcement officials in order to build trust and increase prevention capabilities. Communication skills and building trust with the community is a designated component of SDR[®] training. Negating ethnic profiling in policing practices with SDR[®] and treating community members with respect gives police and security forces the ability to reestablish trust between their officials and the communities in which they serve.
- *Social cohesion:* The cycle of trust, citizen participation and prevention needs to be made more explicit. Increased trust and citizen participation leads to increased perception of security, which catalyzes community development and growth. Trust between security officials and their communities, stemming in part from the exclusion of ethnic profiling, will enhance social cohesion, legitimacy of local law enforcement, and citizen participation both in assisting local law enforcement in endeavors to keep their communities safe, and in activities to help grow their communities.
- *Searching for Abnormalities instead of Suspects:* Success should not be measured by the number of stops, searches, or arrests. SDR[®] training can provide the systematic change needed in the current security practices and methods by redefining what police officers should be searching for to effectively, efficiently and fairly ensure a safer environment and prevent illicit occurrences ranging from minor crime to major crime and terrorism. SDR[®] improves the manner in which officers conduct themselves and the means and definitions by which they learn to identify deviant behaviors and activities. The training provides a new approach to policing and security that alters the criteria which officers look for in order to have proactive attention in order to prevent actions.

SUGGESTION 3: ACTIVE COMMUNITY PARTICIPATION TO REBUILD TRUST

One of the ways that trust can be restored between local law enforcement and the communities they serve is through active engagement of citizens in their safety and security protocols in their neighborhoods. If citizens feel as though their local police officials or law enforcement are willing to accept and listen to their concerns and suggestions, this will inherently build social cohesion and reestablish trust between the two groups. Trust between law enforcement and communi-

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ty members therefore increases actual security as well as perceived security, therefore improving the quality of life and leading back to increased citizen participation.

The United States government and the Department of Homeland Security initiated the Homeland Security Information Network (HSIN) as a means of allowing non-law enforcement officials to take on an active role in the safekeeping of their communities. HSIN tried to connect with the local populace through the Situational Activity Reporting Tool (SAR). The implementation of this resource, although well-intentioned, lacks the supplemental training necessary in order for citizens to truly interpret what information to send to law enforcement officials, and what should ultimately be disregarded.^{xvii}

These issues have been raised before through the collaborative partnership of the Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI). SDR[®] Academy has built an application called **WeAware+**[™] that aims to harness the power of the people. The nuance of the application is that it comes with accessible supplemental training provided by SDR[®] via an e-learning program.

- *Interpreting what we see:* To be more effective, citizen reporting needs to make use of informed, knowledge-based observations rather than panic.^{xviii} Via the e-learning program the **WeAware+**[™] application gives citizens the supplemental tools they need to truly understand and interpret the information they see and receive, and to translate them into effective responses. **WeAware+**[™] harnesses this power through the use of crowdsourced information and crowd wisdom. It furthermore includes a mechanism^{xix}
- *Taking initiative:* Citizens should take some responsibility for the safety and security of themselves and their community. Through the use of **WeAware+**[™], citizens have the capability to take initiative in their own respective communities by:
 - Reporting the activities they recognize through their e-learning training as being abnormal or atypical for their area.
 - Through knowledge-based citizen reporting, local law enforcement agencies are able to understand which threats and risks are the top concerns of the people in their area, as reported by those people; and furthermore respond to and recognize problems in the community in a more rapid, accurate, and efficient manner.
 - The added value of citizen participation and high perceived security leads to an abundance of useful information and tips, as well as increased community cohesion and a more flourishing and safer environment.
- *Technical and Social Cohesion:* Technological and social capabilities should be brought together to elevate prevention and the human factor to the forefront of policing practices for higher effectiveness and efficiency and to negate ethnic profiling. The **WeAware+**[™] program combines technical and social cohesion by giving everyday citizens the opportunity to interact and get involved to counteract crime, disorder, and terrorism.

- *Local leading national:* There should be an accessible mechanism by which local law enforcement in communities can have broader implications for the rest of the country by addressing the concerns of their community and reporting upward what is really impacting the people. **WeAware+** provides citizens with heightened knowledge and capabilities via the e-learning program, and fluid communication with law enforcement, therefore leading to more knowledge-based, nuanced, and actionable reporting of issues that can then be tackled from a higher level. Issues reported by local citizens can therefore influence city, state, and national practice and policy. Equipped with the more sensitive training techniques offered by **SDR**[®] Academy, each individual and each unique community can strengthen their own neighborhood while also leading the way for stronger national security protocols.

SUGGESTION 4: ON-THE-JOB TRAINING

An important factor of training to consider is who the audience may be and how they would best receive information. When trainings are only offered on sporadic occasions or they require long consecutive hours, it makes these formatted trainings less likely to be successful for the broader audience. Consequently, police forces can miss out on valuable training that affects their capabilities and their relationships with their communities. **SDR**[®] offers training that can be used for everyone, regardless of schedule restraints.

- **SDR**[®] Academy offers an efficient and powerful Computer Based Training (CBT), which can be implemented throughout local police stations and security offices in the United States on any device, and which can be conducted at the user's own pace and at their own convenience.
- **SDR**[®] also offers 60-Second **SDR**[®] On-the-Job Learning[™] video clips, which provide daily lessons, knowledge refreshers, and/or information to security and law enforcement officials.

There is an understanding that training needs to suit the local working environment and that it needs to be convenient and easy-to-access for trainees. **SDR**[®], through CBT modules as well as integrated 60-Second **SDR**[®] On-the-Job Learning[™] videos, can give the flexibility in training hours needed, while still providing a unique, effective, and informative methodology.

LOOKING TO THE FUTURE

SDR[®] Academy and the **WeAware+**[™] application answers the President's call for innovative methods to promote effective crime reduction while rebuilding public trust. Reestablishing trust between the security/law enforcement community and the citizens in the communities they serve will breed a more unified community with active participants all brought together with the same goal in mind: keeping their communities safe. We recommend that there be more nuanced training universally provided to police and local law enforcement agencies which simultaneously prevents illicit incidents from minor crime to major crime and terrorism, and concurrently negates the problematic and unjust practices of racial profiling which fractures local communities and creates fissures disconnecting security personnel and their civilian populations.

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ⁱ <http://sdr.eu.com>

ⁱⁱ http://sdr.eu.com/acknowledgements/SDR_results_2010-Bas.pdf

ⁱⁱⁱ http://sdr.eu.com/acknowledgements/SDR_results_2010-Bas.pdf

^{iv} <http://sdr.eu.com/acknowledgements/FRA.pdf>, Case Study 15, Page 58.

^v www.isca.org.il

^{vi} <https://rancohensdr.wordpress.com/2014/12/21/sdr-training-what-makes-us-unique-2/>

^{vii} <http://www.en.vvs.fraunhofer.de/future-security-conference/>

^{viii} http://sdr.eu.com/acknowledgements/UNICRI_Fifth_PPP_International_Workshop_Report.pdf

^{ix} The Washington, D.C. – based Middle East Institute and the Paris-based Fondation pour la Recherche Stratégique held a scientific event for their year-long collaborative project titled Understanding De-radicalization: Pathway to Enhance Transatlantic Common Perception and Practices. This project is ongoing and is funded by the Washington, D.C. delegation of the European Commission.

^x SDR[®] Bar of Normality[®]: An established definition of the routine conduct of a given area that, among other things, takes into consideration local cultural norms, key indicators, the purpose the area serves and local legal guidelines. The Bar of Normality is localized specifically for each environment and is altered in conjunction with fluctuating influential factors such as time of day, holidays, organized events, current events, etc. The Bar of Normality is an operational tool with which to compare people's conduct and demeanor so that abnormalities will inherently become obvious. Abnormalities are any behavior or observable characteristic that is inconsistent with the local definition of normality.

^{xi} http://www.sdr.eu.com/publications/Searching_for_Abnormalities_Instead_of_Suspects.pdf

^{xii} A false positive is when a person or situation is treated as though they are dangerous or suspicious when they are in fact normal. For example, when police racially profile suspects and assume before witnessing any abnormal behavior, that they are suspects. A false negative is when a person is dangerous or suspicious but the signs are not noticed. For example, when police focus less on suspicious behavior and instead look for particular suspects, they could miss actual actors who are potentially dangerous.

^{xiii} <http://www.sinancankaya.nl/the-enforcement-of-the-established-order/>

^{xiv} http://www.nytimes.com/2012/08/12/us/racial-profiling-at-boston-airport-officials-say.html?pagewanted=all&_r=0

^{xv} <https://rancohensdr.wordpress.com/2014/11/22/negating-ethnic-profiling/>

^{xvi} Pliner, Joanna and Cohen, Ran. *The Artificial Gut Feeling[®]: Improving Urban Security by Following Human Instinct.*

^{xvii} <http://www.dhs.gov/suspicious-activity-reporting-tool>

^{xviii} <https://rancohensdr.wordpress.com/2014/12/15/sdr-and-weaware-breeding-awareness-rather-than-fear/>

^{xix} https://www.youtube.com/watch?v=du_RCC3J3Bo

Social Interaction Training for Law Enforcement

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Law Enforcement Training traditionally employs cognitive and psychomotor training techniques that develop multiple skills, knowledge, and abilities primarily focused on the appropriate tactical use of lethal force frequently required for enforcing laws, and not social interaction with citizens. In recent years, agencies have emphasized “community policing” approaches to improving community perceptions of procedural justice and trust in law enforcement, recognizing that inappropriate use of force at the tactical level can have significant negative effects at the strategic, community relations level. While the increased emphasis on community perceptions of legitimacy is encouraging, the training techniques to address community policy and social interaction skills have largely remained unchanged, still rooted in approaches that are more effective for psychomotor training than social interaction training. Successful community policing requires a delicate balance between social interaction and force, requiring approaching, engaging, adapting, and disengaging with citizens while simultaneously enhancing trust and maintaining a safe surrounding. This paper describes several key limitations for delivering social interaction training with traditional methods, and offers evidence-based recommendations for overcoming these limitations with recent advances in educational technology.

Current social interaction training techniques use a mix of facilitation, problem solving, critical thinking, mock scenes, and real-time community engagements. The training is delivered in both a controlled and a non-controlled constructivism learning environment. However, there were limitation discovered to the quality and pace of feedback observers can provide following a social interaction in the classroom and in the community learning space. An observer can only attend to and retain a limited amount of information related to trainee performance. While observers may convey feedback to the trainee in a debrief following the interaction, the feedback content is based on a recollection that is often incomplete and vulnerable error due to cognitive biases¹. Similarly, quality feedback requires the instructor to recall each of the teaching moments from the interaction, which can take significant time and lead to inefficient post-interaction debriefs.

The trainee’s implicit bias toward certain demographic groups can unknowingly interfere with interactions during training as well as in the field, reducing perceptions of fair and impartial policing.^{2,3} Solutions to this problem, such as repeated exposure to members of discriminated group(s), may take significant time to change implicit biases. Lastly, when given the freedom to rate trainees as they see fit, observers may vary greatly in the content and quality of their performance ratings and feedback. Such unreliability can lead to inconsistent expectations among trainees, and thus a lack of cohesion in their approaches to tactical social interactions.

While these limitations can hinder progress in tactical social interactions, recent advances in technology can help prevent these limitations from posing significant problems in training. The following evidence-based recommendations are offered with the goal of advancing the science and practice of social interaction training in law enforcement:

Recommendation 1: *Use technology to capture complete observations in real time during interactions*

The use of technological tools enables trainees to receive immediate, consistent, and repeatable feedback. Tools that enable audio and video recording and playback of social interactions can diminish problems of memory decay for both trainers and trainees by facilitating real-time annotation/evaluation by trainers as well as playback-based feedback with minimal time delay after the original social

interaction for trainees.⁴ By providing a concrete artifact upon which to base feedback and evaluation, technology-enhanced approaches to social interaction training can augment opportunities for reflective thought about specific, critical aspects of a social encounter. Researchers and practitioners have found these types of technology-enhanced feedback sessions to significantly improve training outcomes¹ across police, military, legal, and general educational contexts.

Recommendation 2: *Use technology to enable more efficient and reliable feedback*

The inability to capture and recall all details of a highly-dynamic interaction can hinder an observer's abilities to understand performance gains and facilitate feedback efficiently.⁵ Using technology to capture learning moments as they occur in real time can lead to more organized and targeted debriefs immediately following the interaction. Such technology can guide the observer through a structured debrief, reviewing and attending to teaching moments objectively as they occurred in the interaction. Similarly, the learner can receive clear and concise feedback with guidance from the instructor, saving time during debriefs while more directly targeting areas for learning.

Recommendation 3: *Use video technology to recognize and reduce implicit biases*

Technology-enhanced training approaches that incorporate audio and video recording benefit from active observation of one's own social performance, allowing for greater cognitive benefits of training. Targeted self-observation can provide objective information about one's own behavior, leading to an increased awareness of how one's social behavior is perceived by others.⁶ More importantly, reviewing video from one or more cameras will enable instructors to guide learners through uncomfortable teaching moments using a known-to-unknown-to-known learning strategy.⁷ Such a sequence guides the learner from an initial state of comfort through uncomfortable interactions and, iteratively, to a new state of comfort. This sequence can help the learner understand his or her own strengths and weaknesses while learning to reduce the impact of their implicit biases on their tactical social interactions. By watching how their demeanor changes across interactions, video capture technology can provide learners the objective feedback needed to make substantive improvements in their approach to social interactions.

Recommendation 4: *Develop standardized performance metrics for tactical social interactions*

Another crucial advantage of using technology-based assessment tools to provide feedback to trainees is that it enables standardized feedback and process of delivering the feedback across observers and scenarios. If different instructors create different sets of metrics for evaluating performance, as is often the case, evaluation and thus training value will be inconsistent. Moreover, the process in which feedback is given can be dramatically downsized and targeted toward key competencies and or key interaction skills. This can reduce the amount of time given to a student during an after-action review (AAR), thereby giving the learner more opportunities for practice for further application of the skills, knowledge, and abilities learned prior to and or during current training. Recent research funded by the Defense Advanced Research Projects Agency (DARPA), conducted with the assistance of law enforcement trainers, has identified a set of key interactional skills that enable law enforcement officers and military personnel to effectively communicate with individuals from similar or different backgrounds.^{8,9,10,11} These skills include (1) observing and adapting to unfamiliar norms or behavior, (2) building rapport, and (3) recovering from sources of trouble in interaction. Each of these three clusters of key interactional skills can be distilled into measurable performance metrics.¹² Implementing a technological tool that allows for the use of standardized assessment metrics can improve the reliability of raters by providing them with a pre-defined set of evidence-based metrics on which to evaluate trainee performance.

¹ MacMillan, J., Entin, E. B., Morley, R., & Bennett Jr, W. (2013). Measuring team performance in complex and dynamic military environments: The SPOTLITE method. *Military Psychology*, 25(3), 266.

² Fridell, L. A. (2008). Racially biased policing: The law enforcement response to the implicit black-crime association. *Racial divide: Racial and ethnic bias in the criminal justice system*, 39-59.

³ Fridell, L. (2013, September). This is Not Your Grandparents' Prejudice: The Implications of the Modern Science of Bias for Police Training. *Translational Criminology*, Fall 2013, pp. 10-11.

⁴ On the problem of memory decay as relating to feedback on performance see, e.g., Lyle, J. (2003). Stimulated recall: A report on its use in naturalistic research. *British Educational Research Journal* 29(6).

⁵ Bink, M. L., Dean, C., Ayers, J., & Zeidman, T. (2014). *Validation and Evaluation of Army Aviation Collective Performance Measures*. ARI Technical Report. Ft. Leavenworth, KS: U.S. Army Research Institute for the Behavioral and Social Sciences.

⁶ Albright, L. & Malloy, T.E. (1999). Self-observation of social behavior and metaperception. *Journal of Personality and Social Psychology* 77(4) 726–734. Fireman, G., Kose, G., & Solomon, M. (2003). Self-observation and learning: The effect of watching oneself on problem solving performance. *Cognitive Development* 18(3), 339–354. Souh, L.M. (2001, April 10–14). Using stimulated recall in classroom observation and professional development. Paper presented at the Annual Meeting of the American Educational Research Association, Seattle, WA.

⁷ Rothwell, W. J., & Kazanas, H. C. (2011). *Mastering the instructional design process: A systematic approach*. John Wiley & Sons.

⁸ Damari, R.R., & Logan-Terry, A. (under review). Key Culture-General Interactional Skills for Military Personnel. Under review at *Military Review*.

⁹ Damari, R.R., & Logan-Terry, A. (2015, July 26–30). Rapport building and questioning strategies in cross-cultural military training scenarios. Paper to be presented at *Conference on Cross-Cultural Decision Making*, Las Vegas, NV.

¹⁰ Logan-Terry, A. (2013, March 16–19). "Show, Shout, Shove, Shoot": Interactional Trouble and Remedy in Military Role Play Training. Paper presented at the American Association of Applied Linguistics, Dallas, TX.

¹¹ Flanagan, S., Knott, C., Diedrich, F., Halverson, K., & Horn, Z. (2015, July 26-30). Teaching Social Interaction Skills with Stealthy Training Techniques. Paper to be presented at *Conference on Cross-Cultural Decision Making*, Las Vegas, NV.

¹² As part of DARPA's Strategic Social Interaction Modules (SSIM) program, the Social Interaction Research Group at Georgetown University conducted extensive ethnographic research at a variety of police and military role play-based training sites over the course of two years. Through detailed qualitative and quantitative analysis, we identified a set of key interactional skills that were associated with more positive outcomes of tactical social interactions in a variety of cultural contexts, including with role players portraying Americans, Filipinos, Afghans, and Indians. All individuals, regardless of "culture," have unique sets of experiences, and these experiences lead to the adoption of distinct expectations about how human interaction works. Thus, in a sense, every interaction we have in our lives is cross-cultural, and this is particularly true for police officers, who may immediately be viewed as belonging to a distinct "culture."



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

A nonprofit, nonpartisan legal organization formed at the request of President Kennedy in 1963



WRITTEN COMMENT OF

THE LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW

SUBMITTED TO:

THE PRESIDENT'S TASK FORCE ON 21st CENTURY POLICING

On

February 23, 2015

**Written Comment of the Lawyers' Committee for Civil Rights Under Law
Submitted by Tanya Clay House, Director of Public Policy
To the President's Task Force on 21st Century Policing**

February 23, 2015

Introduction

The Lawyers' Committee for Civil Rights Under Law thanks President Obama for convening this Task Force and all the Members of the Task Force for their service and dedication to the mission of this initiative. We appreciate this opportunity to comment on the role of police in a democratic society, the law enforcement practices which have destroyed public trust in police, and recommendations aimed at a restructuring of the police-civilian interaction from one of militarized control to public service.

The Lawyers' Committee for Civil Rights Under Law was established in 1963 as a nonpartisan, nonprofit organization at the behest of President John F. Kennedy. Our mission is to involve the private bar in providing legal services to address racial discrimination and to secure, through the rule of law, equal justice under law. For 50 years, the Lawyers' Committee has advanced racial equality in areas such as educational opportunities, fair employment and business opportunities, community development, fair housing, voting rights, environmental justice, and criminal justice. Through this work, we have learned a great deal about the challenges confronting our nation as it continues to tackle issues of race and equality of opportunity for all. For four decades, the Lawyers' Committee has been at the forefront of the legal struggle to achieve equality and protect advances in civil rights for racial and ethnic minorities and other traditionally disenfranchised groups. The organization is committed to ending the over-criminalization, discriminatory policing and over-incarceration of American citizens, especially citizens of color.

The purpose and mission of the Task Force on 21st Century Policing is of particular importance to the Lawyers' Committee's work. Lawyers' Committee has emerged a leader in condemning police brutality and abuse, excessive use of force, and racial profiling against African American and other communities of color. The recent killings of Michael Brown, Eric Garner, Tamir Rice and others, tore wide open historic wounds of racial discrimination and targeting by law enforcement that had long festered in communities of color and in a rare moment, brought race to the forefront of the debate about the role of police in society. The Lawyers' Committee spearheads a coalition of civil rights organizations dedicated to over-hauling and restructuring law enforcement in America, especially in with regard to their treatment of communities of color. The coalition released a "Unified Statement of Action To Promote Reform And Stop Police Abuse," that calls for a series of reforms aimed at transforming the culture of policing in communities of color and economic disadvantage.

This statement will incorporate these recommendations and others in the hopes of providing the Task Force with a few solutions aimed at a complete restructuring of interactions between police and civilians. This level of reform is necessary to regain public trust in police across the nation, to the benefit of public and officer safety alike.

I. Racial Profiling

It is beyond question that across the nation, law enforcement officials – knowingly, as a result of implicit racial bias, or as part of a police culture – disproportionately target individuals and communities of color. Not only is proof of racial profiling documented in every jurisdiction to be studied, but it is ingrained in the everyday experience of nearly every person of color in America. Over the past several decades, the increased enforcement of the nation's drug laws over the past several decades has been targeted largely at people of color, and an increased use of prison and jail as the solution to our society's ills has left communities ravaged. Stop-and-frisks, "jump out squads," illegal searches, baseless arrests

and general harassment by police are today commonplace in urban communities of color. Public trust in police and acknowledgement of their authority is severely undermined as a result. Police are perceived by many within these communities not as protectors and public servants, but as oppressors and persecutors.

Nationwide reporting on law enforcement arrests, searches, use of force, and citizen complaints is nonexistent. The data that does exist is collected from jurisdictions on an optional basis, and is thus incomplete. However, that dataset shows that in 2012, law enforcement in the United States made more than 12 million arrests—of which less than 5 percent were for violent crimes.ⁱ The vast majority of individuals were charged with low-level, non-violent offenses. Between 1980 and 2010, there was no increase in police effectiveness, as measured by the ratio of arrests to crimes that might explain higher rates of incarceration that occurred over the same period.ⁱⁱ During this same time periods, however, police arrest rates for drug possession and use offenses increased by 89 percent.ⁱⁱⁱ

African Americans have always been arrested for drug crimes at a higher rate than for whites.^{iv} The immense increase in drug arrested through the 1980s had a large and disproportionate effect on African Americans. *USA Today* reports that 91% of individuals arrested in drug sting operations by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in the past decade have been racial minorities – nearly all black or Hispanic.^v In another recent investigation of the Newark Police Department, the Department of Justice found that three-quarters of pedestrian stops by Newark police in recent years were unconstitutional.^{vi} Although blacks accounted for 54% of the city's population, they made up 81% of pedestrian stops and 79% of arrests.^{vii} Blacks were also more than three times as likely to be frisked as whites, even though rates of recovering evidence did not differ by race.^{viii} Based on its investigation, the DOJ announced that it would assign a federal monitor to the Newark Police Department.

II. Police Abuse of Force

The recent killings of Michael Brown and Eric Garner amplified what African American communities in the United States have long decried: that America's experience with law enforcement is deeply divided along racial lines. The targeting of minority neighborhoods, homes, and individuals by police are not efforts to "protect and serve," evidenced in the complete detachment between the police and the community and the conspicuous absence of black police officers in the police forces which patrol those areas. Instead, law enforcement, in many communities of color, has become a mechanism of control and oppression. Facially race-neutral crime policies, such as the "war on drugs" and "broken windows policing," by which law enforcement aggressively maintain and monitor urban environments on the theory that such heightened policing of relatively "minor" violations stops further vandalism and escalation into more serious crime, have been deployed predominantly against communities of color. These tactics have resulted in the systematic criminalization of communities of color with young black men, in particular, comprising the lion's share of those entering the criminal justice system in the United States. Even when not directly resulting in imprisonment, these practices have contributed to the rise in modern-day "debtors' prisons," the unconstitutional practice of imprisoning an individual simply for being too poor to pay fees and fines associated with low-level infractions, and the needless seizure of individual property under the guise of civil asset forfeiture laws. The harsh reality of these policing practices is that people "go underground" to avoid the police, cutting themselves off from job opportunities, welfare benefits, or other programs that can help them succeed. In a very real sense, they drop out of real society and are destined for a life of second class citizenship and disenfranchisement.

Confirming empirically what black communities have long held about law enforcement is extremely difficult because there is a disturbing lack of information on police brutality – and on the killing of civilians by the police in particular. There is no national database to which police departments are required to submit a record when they complete an investigation or after a police officer shoots a civilian. The Federal Bureau of Investigation does collect some data, but this database has tremendous

limitations: jurisdictions are not required to submit the data to the FBI; deaths of unauthorized immigrants, or of those who are injured by police and later die from the injuries, are unlikely to go reported; there are frequent inconsistencies caused by data processing problems and entries are also subject to manipulation by the police departments.^{ix} In real terms, for example, the FBI only collects approximately 25% of the data and fails to include addressees and offense and incident level data. Thus, there is an inability to do a full neighborhood analysis of incidents. Given the almost 18,000 law enforcement agencies across the United States, collecting data separate from a centralized reporting system is a practical impossibility absent a mandatory reporting system.^x

What this limited dataset does reveal, however, is that 426 police homicide victims were reported in 2012, implicating 631 officers. These victims are overwhelmingly male, and like most people that interact with the criminal justice system, disproportionately black: 31 percent of victims killed by police during arrest were black, compared to their share of the population at 13 percent. This data also exposes that most men killed by police in “justifiable homicides” in 2012 were young. However, the age breakdown of victims varies by race, exposing that younger victims of police killings are even more disproportionately youth of color.

Abuse by federal law enforcement agencies is of particular concern. Killings by the U.S. Customs and Border Protection (USCBP), the largest federal law enforcement workforce, have recently come to light: from 2010 to 2013, at least 22 people have been killed by Border Patrol agents, most along the southwest border, and hundreds have filed formal complaints of official misconduct, including beatings, sexual abuse, and other assaults. Reports indicate USCBP failed to properly investigate these claims, refused to tell families of those injured or killed by border agents if the agency had determined that the agent had acted improperly or had been disciplined. Despite assurances by the Obama Administration of reforms to USCBP’s use of force policies, no shootings cases have been resolved, and no agents have been disciplined to date.^{xi} The failure to collect data across law enforcement agencies is unacceptable and perpetuates the continuation of such abuses in the system such as those recently exposed at USCBP.

Recommendations

This Task Force should make the following recommendations to the President.

1. Mandate Data Reporting to Improve Transparency in Police Practices.

A top recommendation of the Task Force should be for the President to do what is within his authority to require reporting of federal, state and local law enforcement agencies, including arrest and use of force reports, demographic information, such as the race, ethnicity, and gender of all those subject to police action. This may take the form of altering questions asked as part of the federal grant-making authority.

2. Require Body Cameras With Appropriate Policies to Improve Transparency While Maintaining Privacy.

The Task Force should recommend that the President direct greater funding for programs within the Department of Justice which provide state and local law enforcement agencies with grants for body cameras or police vehicle dashboard cameras. Body cameras are useful not only in situations involving a citizen complaint or controversy, but as part of routine review of police conduct and efficacy. Video from body cameras could be used in training to exemplify good and effective policing, as well as serve as evidence in cases of police misconduct or abuse. Researchers could have access to videos in order to better research the effectiveness of policing though interactions with the public. The required use of body cameras for police-civilian interactions should be accompanied by rigorous standards regarding the retention, use, access,

and disclosure of data captured by such systems. Proper use of body cameras should include the following rules: require a police officer to disclose to people that they're being recorded, provide some leniency for when a cop needs to record, limit public access to footage when it is directly pertinent to a personal or public issue with police, and prevent footage, particularly recordings impertinent to an investigation, from being held for long periods of time. Additionally, an independent body should be able to verify the policies are being enforced correctly.

3. *Conduct a Comprehensive Study of Police Killings and Excessive Use of Force Over the Past Several Years to Inform Current Policies and Hold Officers Accountable.*

Because of the remarkable limitations of the FBI's database on this information, the Task Force should recommend a nationwide comprehensive study of police killings and excessive use of force over the past several years. This will properly inform the public debate and any new policies adopted.

4. *Clearly Prohibit Racial Profiling.*

The President should direct the Department of Justice to immediately revise the "Guidance For Federal Law Enforcement Agencies Regarding The Use Of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, Or Gender Identity." Under the current Guidance, racial discrimination is permissible by federal law enforcement officers at the border by Transportation Security Administration and both at in in the vicinity of the border by U.S. Customs and Border Protection. Perhaps most importantly, the Guidance should be revised so that federal funding to state and local law enforcement agencies is contingent on compliance with the Guidance.

5. *Fund Research on Reducing Implicit Bias in Law Enforcement Agencies.*

The Task Force should recommend that the Department of Justice fund scientific research on the incidence, consequences of, and measures to reduce implicit bias among police officers. This research should be aimed at finding effective systems that detect and reverse the effects of implicit bias in law enforcement activities.

6. *Develop Training Curriculum Aims at Reducing Implicit Racial Bias.*

The Task Force should recommend that the Department of Justice immediately develop effective implicit bias training curricula, and other programs to reduce more serious forms of racial bias and stereotypical behavior. Law enforcement agencies receiving federal funding should be required to implement this training on a routine basis and integrate measures to reduce implicit bias into their policies and procedures.

7. *Re-examine Laws and Policing Regarding Use of Force by Law Enforcement and Develop National Use of Force Definitions and Standards.*

Law enforcement is given a near-monopoly on the legitimate use of force against fellow citizens in order to maintain public safety and serve the public. There are no national standards or universal definitions, however, making studying excessive use of force by police almost impossible.^{xiii} The Task Force should recommend the development of national standards and definitions for the use of force by law enforcement, and incentivize states to adopt the national standards through funding measures.

8. *Hold Police Officers Accountable for Unjustified Killings and Excessive Use of Force.*

The President should support the creation of an independent commission to review law enforcement policies and practices and hear citizen complaints in order to hold federal and state law enforcement officials accountable.^{xiii}

The Task Force should also recommend that the Department of Justice should prioritize investigations of police departments to address the unjustified use of lethal and excessive force by police officers in jurisdictions throughout this country against unarmed people of color.

The Department of Justice should reexamine and institute better and effective accountability measures in authorized grant programs such as the Byrne Justice Assistance Grant program and others. Accountability measures should include required racial bias and implicit bias training, racial profiling and more.

Conclusion

The Lawyers' Committee for Civil Rights Under Law presents these recommendations in the hope that they may affect a revolution in police culture, from one of militarized control to public service. Only a complete restructuring of police-civilian interaction will restore public trust in law enforcement to the benefit of public and officer safety alike. The organization extends its thanks to the Task Force for its work and the opportunity to present these comments and recommendations.

ⁱ Laura and John Arnold Foundation, Press Release: Laura and John Arnold Foundation Partners with the International Association of Chiefs of Police on Citation Research, available at <http://www.arnoldfoundation.org/laura-and-john-arnold-foundation-partners-international-association-chiefs-police-citation-research> (Apr. 2, 2014).

ⁱⁱ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, Washington, DC: The National Academies Press (2014) at 49.

ⁱⁱⁱ *Id.*

^{iv} It might be hypothesized that blacks may be arrested at higher rates for drug crimes due to higher drug use rates, but the best available research refutes this hypothesis. Self-reported drug use among blacks is consistently lower than among whites. Fewer data are available on drug selling, but self-reports show a higher level of sales among poor white than poor black youth. See National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, Washington, DC: The National Academies Press (2014) at 50.

^v Heath, Brad, "Investigation: ATF drug stings targeted minorities," USA Today (July 20, 2014), available <http://www.usatoday.com/story/news/nation/2014/07/20/atf-stash-house-stings-racial-profiling/12800195/>.

^{vi} U.S. Dept. of Justice Civil Rights Division, U.S. Attorney's Office District of New Jersey, *Investigation of the Newark Police Department* (July 22, 2014), available <http://www.justice.gov/usao/nj/Press/files/pdf/files/2014/NPD%20Findings%20Report.pdf>.

^{vii} *Id.* at 20.

^{viii} *Id.*

^{ix} Lind, Dara, "What we know about who police kill in America," Vox (Aug. 21, 2014), available at <http://www.vox.com/2014/8/21/6051043/how-many-people-killed-police-statistics-homicide-official-black>.

^x Bureau of Justice Statistics, *Census of State and Local Law Enforcement Agencies, 2008*, 2, <http://www.bjs.gov/content/pub/pdf/csllea08.pdf>.

^{xi} Bennett, Brian, "Border Patrol sees little reform on agents' use of force," LA Times, 23 Feb. 2015, available <http://www.latimes.com/nation/la-na-border-abuse-20150223-story.html#page=1> (last accessed Feb. 23, 2015).

^{xii} See National Institute of Justice website, "Police Use of Force," available at <http://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/pages/welcome.aspx> (last accessed Jan. 28, 2015).

^{xiii} The Unified Statement of Action to Promote Reform and Stop Police Abuse, signed by 14 civil rights organizations put forth 14 recommendations which can be viewed at http://signup.lawyerscommittee.org/p/dia/action3/common/public/?action_KEY=10281



**Supplemental Statement by the
NAACP Legal Defense and Educational Fund, Inc.
To the President's Task Force on 21st Century
Policing**

February 17, 2015

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Introduction

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), I offer this supplemental statement to the President's Task Force on 21st Century Policing ("Task Force") in the hopes that it will inform the Task Force's recommendations to the President regarding strategies to foster trust, collaborative relationships, and mutual respect between local law enforcement and the communities they protect and serve, while also promoting effective crime reduction. LDF is the nation's oldest civil rights legal organization. Since its founding by Thurgood Marshall in 1940, LDF has relied on the Constitution, as well as federal and state civil rights laws, to pursue equality and justice for African Americans and other people of color. Given LDF's institutional mission and continuous engagement in litigation and policy advocacy designed to eliminate the pernicious influence of racial bias in all stages of America's criminal justice system, the longstanding problem of police abuse and excessive force in communities of color is of utmost importance to LDF.

At the invitation of the Task Force, LDF offered oral and written statements at the January 13, 2015 Listening Session centered on "Building Trust and Legitimacy." Those statements detailed recommendations that sought to eliminate police violence in communities of color through police officer accountability, police officer training, and transparency in law enforcement. Additionally, LDF previously called upon the Department of Justice (DOJ) to address the unjustified use of lethal and excessive force by law enforcement against African Americans,¹ and worked in partnership with other national civil and human rights organizations to seek comprehensive policing reforms.²

LDF remains engaged in efforts to implement its prior calls for policing reforms and is hopeful that previously offered proposals will aid the Task Force in crafting recommendations to the President. The instant submission supplements LDF's earlier statements by briefly addressing the ways in which federal government resources can be deployed to advance policing reforms relating to accountability, data collection, demilitarization of police in schools, and training on bias-free policing.

At the outset, LDF recognizes the jurisdictional challenges associated with federal efforts to reform law enforcement practices that traditionally fall within the purview of state and local authorities. But, federal financial support for state and local police departments through various federal grant programs, such as the Edward Byrne Memorial Justice Assistance Grant (JAG) Program, and federal statutes prohibiting race discrimination in policing, such as Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968, could serve as substantial and effective vehicles for oversight.

In particular, Title VI and the Safe Streets Act require the DOJ to ensure that federally funded programs are administered free of discrimination.³ Thus, the DOJ must properly assess and ultimately ensure that law enforcement recipients of federal funding have taken affirmative steps to eliminate bias in policing practices.⁴ Moreover, federal funding—and the process used to distribute funding—can be used as a mechanism to encourage or discourage certain police practices or behaviors in the following ways:

1. Accountability in Policing through Adequately-Funded Special Prosecutor Offices

The incidents of lethal and excessive force exercised by police against African Americans are the focus of significant concern in communities nationwide. The apparent lack of accountability for police misconduct, abuse, and the use of unjustified lethal force is particularly troubling. In far too many instances, the law seems inadequate to protect those abused by the police. And the failure to hold officers accountable for their misconduct fosters the perception that they are able to engage in such behavior with impunity. This behavior deepens the gulf of mistrust that exists between police and those that they are required to protect and serve.

As LDF and others who offered testimony before the Task Force explained, new models of police accountability are necessary to meet the challenges presented by police violence and misconduct. Prosecutorial and investigatory authorities must be independent of the law enforcement agencies they are charged with monitoring, so that they are not beholden to local or parochial interests that undermine efforts to ensure accountability.

With this in mind, LDF recommends that the DOJ create and adequately fund and monitor special prosecutor offices or prosecutorial units focused solely on incidents of police misconduct and excessive or lethal use of force. Several states, such as New York, Connecticut, and Wisconsin, have laws that call for the appointment of special prosecutors or independent investigators in officer-involved death cases.⁵ Federal funding could serve as an incentive to support and expand these efforts nationwide.

2. Mandatory Use of Force Data Collection for Law Enforcement Recipients of Federal Funds

As detailed in LDF's previous testimony before the Task Force, unreliable, piecemeal data collection on police-citizen encounters and police-involved use of force incidents wholly undermine efforts to hold police accountable for their conduct and obscures the character and scope of the concerns raised by problematic police-citizen encounters.⁶ Indeed, Attorney General Eric Holder recently lamented the

lack of reliable data when he remarked that “[t]he troubling reality is that we lack the ability right now to comprehensively track the number of incidents of *either* uses of force directed at police officers *or* uses of force by police. This strikes many – including me – as unacceptable. Fixing this is an idea that we should all be able to unite behind.”⁷

To this end, Congress recently passed and President Obama signed the Death in Custody Reporting Act of 2013, which requires law enforcement agencies that receive federal funding to report to the U.S. Attorney General, on a quarterly basis, in-custody deaths of persons who were arrested, detained or incarcerated. The Attorney General must study these data and report on ways to reduce the number of such deaths.⁸

While this is an important first step, the DOJ should also require law enforcement recipients of federal funds, particularly funding used to hire new police officers, to collect and report data regarding police use-of-force incidents, including lethal force, disaggregated by the race, ethnicity, and sex of the civilian and location of the incident. Title VI, the Safe Streets Act, and the federal funding discussed above offer federal authorities, including the DOJ, sufficient opportunity to require that police departments provide the kind of statistical information and other data to ensure compliance with Title VI of the Civil Rights Act of 1964 and the guidelines of federal grant programs.

3. Demilitarization of Police in Schools

Without question, the jarring images of the military-style response by local police to the public protests in Ferguson shocked the nation. Law enforcement officers suddenly appeared in military fatigues and full-body armor and rode in armored trucks through peacefully gathered crowds. LDF has appealed to Congress to limit, and in many cases end, federal programs that equip state and local law enforcement agencies with military-style weapons, vehicles and aircraft.⁹

LDF is particularly troubled by reports of the U.S. Department of Defense’s transfer and/or lending of military weapons for use at K-12 public schools through its 1033 Excess Property Program (“1033 Program”). A number of school districts have participated in the 1033 program,¹⁰ and received military equipment. For example, the Granite School District in Utah reportedly received M-16s through the 1033 program.¹¹

As a fundamental matter, militarization of our educational institutions negatively impacts the educational environment for all students. However, the greatest potential impact is on students of color. These students are already disproportionately impacted by the criminalization of student conduct. For example, while African-American students make up 16 percent of student

enrollment nationally, they comprise 27 percent of students referred to law enforcement and 31 percent of students arrested, often for minor “discretionary” offenses, like “disrespect.”¹² Increasingly, African American girls are disproportionately impacted by out-of-school suspensions for minor behavior.¹³

A significant contributor to the “School to Prison Pipeline” is the presence of law enforcement officers on school grounds, often known as “School Resource Officers.” These officers are extensively involved in school discipline and often arrest, ticket, or cite students or refer them to the juvenile justice system for routine infractions. Research shows that police presence in schools negatively impacts school climate, fueling distrust and anxiety among students, despite doing little to improve safety.¹⁴ Adding military weaponry will only exacerbate tenuous climates and further intimidate and alienate students. Some of the school districts reportedly participating in the 1033 program, including those in California, Florida, Georgia, Kansas, Michigan, Nevada, and Texas, have documented histories of discipline disparities involving students of color.¹⁵

The transfer of military-style equipment to schools is especially alarming given that school law enforcement personnel are routinely used to handle minor disciplinary matters. Those personnel are often not trained to handle such incidents, and the combination of possible implicit bias and unchecked discretion result in high suspension and expulsion rates among youth of color, even though they do not misbehave more frequently than their white peers.

This country cannot afford to conflate school safety with school discipline or understate the harmful consequences of militarizing school police. The use of *any* form of military equipment on school campuses is certainly well beyond the scope of federal programs designed to equip law enforcement with weaponry. And, exacerbating overly punitive discipline practices and hostile school climates by arming school police officers with military-grade weapons poses significant danger to those students most vulnerable to overly punitive discipline. LDF urges the Task Force to recommend that the DOJ use its consultative authority under the 1033 Program¹⁶ to end the transfer of surplus military weapons, vehicles and aircraft to law enforcement in K-12 public schools.

4. Training on Bias-Free Policing and De-escalation to Improve Police-Community Relations

A week ago, Federal Bureau of Investigation Director James Comey courageously acknowledged what most communities of color have known for decades – in American history, police “enforced the status quo, a status quo that was often brutally unfair to disfavored groups.”¹⁷ He added that “[m]any people in our white-majority culture have unconscious racial biases and react differently to a white face

than a black face. In fact, we all, white and black, carry various biases around with us.”¹⁸

All agree that improving the relationships between law enforcement and communities is absolutely critical. Improving those relationships requires ensuring that police officers are appropriately and properly trained. As described in LDF’s previous testimony and by a number of Task Force witnesses, training must focus squarely on explicit and implicit racial bias,¹⁹ the use of force, de-escalation techniques, and the appropriate engagement with youth and those who exhibit mental health concerns. Trainings, or any remedial measures designed to improve police practices, must also be informed by the lived experiences of police officers. Ideally, community members could also provide input and guidance on the concerns that shape police officer training. At a minimum, officers must: be taught to acknowledge and confront attitudes and biases that shape their behavior; be given clear guidance on the appropriate use of force; and be trained to de-escalate encounters and engage in respectful policing. Training of this sort is done to effectuate a change in the culture of policing, which will in turn help to bridge the gulf of mistrust at the root of tragic police-citizen encounters.

The enforcement tools of Title VI and the Safe Streets Act and incentives inherent to federal funding should be deployed to make certain that police departments are undertaking these types of training efforts, and that they are effective. In particular, police departments that receive federal funding from entities such as the Community Oriented Policing Services program should be required to undergo Fair and Impartial Policing Training and similar training programs that will improve the provision of police services to diverse communities. Doing so will undoubtedly ease the tensions that so often define relationships between communities and police.

Finally, improving the character of police-community relations means fully confronting the scope and function of policing. Law enforcement policies, such as so-called “broken windows” policing that incentivizes arrests and broadens the role of police beyond protecting the health, safety, and welfare of community members, exacerbate mistrust, criminalize communities, and drive the types of incidents that led to Michael Brown and Eric Garner’s deaths. Eliminating the perverse incentives that reward arrests will help improve police-community relations.

Conclusion

The problems the Task Force must confront are complex but not insurmountable. LDF hopes that the recommendations offered here, as well as in its previously submitted written and oral statements, prove useful as the Task Force considers the submissions it has received to date. LDF looks forward to reviewing the Task Force’s final report to the President and thank you for your consideration.

Endnotes

¹ LDF has asked DOJ to: (1) undertake a comprehensive and thorough review of police-involved assaults and killings; (2) provide strong financial incentives for racial bias training and avoiding the use of force; (3) hold police officers and departments accountable to the full extent of federal criminal and civil rights statutes; and (4) encourage the use of police officer body-worn cameras. *See*, Letter from Sherrilyn Ifill to Att’y Gen. Eric Holder Re: Use of Excessive Force by Police, (Aug. 14, 2014), http://www.naacpldf.org/files/case_issue/8-14-2014%20Letter%20to%20AG%20Holder%20re%20use%20of%20excessive%20force%20by%20police.pdf.

² Among the reforms called for were: review and reporting of racial profiling practices; review and reporting of stop and frisk, search, and arrest practices; updating the 2003 DOJ Guidance Regarding the Use of Race by Federal Law Enforcement Agencies; elimination of “broken windows” policing, which encourages aggressive responses to minor offenses; and the promotion of community-based policing. *A Unified Statement of Action to Promote Reform and Stop Police Abuse*, NAACP Legal Defense & Educational Fund, Inc., (Aug. 18, 2014), www.naacpldf.org/files/case_issue/Black%20Leaders%20Joint%20Statement%20-%202014-18_0.pdf.

³ *See*, Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d - 2000d-7, states that “[n]o person in the United States shall, on the ground of race, color, or national origin, be . . . subjected to discrimination under any program . . . receiving Federal financial assistance.” Accordingly, 28 C.F.R. § 42.105-09 places an affirmative obligation on DOJ to ensure that recipients of federal funding are not engaged in discrimination and to conduct periodic reviews to ensure compliance with Title VI antidiscrimination mandate. A failure to comply with these provisions may result in the suspension or termination of federal funding. *Id.* at § 42.108.

See also, Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §3789d(c)(1) (2015), which states “no person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this chapter.” Failure to comply could result in the suspension or termination of grant funds. §3789(d)(c)(2).

⁴ Pursuant to 28 C.F.R § 42.101, no program or activity receiving financial assistance from the DOJ may engage in racial discrimination. It follows, therefore, that law enforcement agencies receiving federal funds through the JAG program may not subject any person to discrimination based on race, color, or national origin.

⁵ *See*, Eric T. Schneiderman, Attorney General of New York State, *A.G. Schneiderman Requests Executive Order to Restore Public Confidence in Criminal Justice System*, December 8, 2014 (asking New York Governor Andrew Cuomo to use his executive power under N.Y. Exec. Law § 63.2 to authorize the Attorney General to investigate and prosecute police-involved deaths), <http://www.ag.ny.gov/press-release/ag-schneiderman-requests-executive-order-restore-public-confidence-criminal-justice>; *See, also*, Conn. Gen. Stat. §51-277a (2015)(requiring the Division of Criminal Justice to investigate officer-involved deaths and allowing the Chief State’s Attorney to appoint a special assistant state’s attorney to investigate such cases); Yamiche Aleindor, *Wis. Bill mandates rules for officer-involved deaths*, USA Today, April 30, 2014 (discussing the passage of Assembly Bill 409 (now Wis. Stat. Ann. §175.47), which requires law enforcement agencies to develop a policy mandating the investigation of police-involved shootings by at least two independent investigators).

⁶ See Wesley Lowery, *How many police shootings a year? No one knows*, The Washington Post, Sept. 8, 2014, <http://www.washingtonpost.com/news/post-nation/wp/2014/09/08/how-many-police-shootings-a-year-no-one-knows/>; Naomi Shavin, *Our Government Has No Idea How Often Police Get Violent With Civilians*, New Republic, Aug. 25, 2014, <http://www.newrepublic.com/article/119192/police-use-force-stats-us-are-incomplete-and-unreliable>; Radley Balko, *Why Are There No Good Data On Police Use of Force?*, Huffington Post, Feb. 10 2013, http://www.huffingtonpost.com/radley-balko/why-is-there-no-good-data_b_227801_3.html.

⁷ Press Release, United States Department of Justice, *Attorney General Holder Urges Improved Data Reporting on Both Shootings of Police Officers and Use of Force by the Police*, Jan. 15, 2015, available at <http://www.justice.gov/opa/pr/attorney-general-holder-urges-improved-data-reporting-both-shootings-police-officers-and-use>. See also, James Comey, Director, Federal Bureau of Investigation, Remarks Delivered to Georgetown University about the Hard Truths of Law Enforcement and Race, Feb. 12, 2015, (stating that “[d]emographic data regarding officer-involved shootings is not consistently reported...Because reporting is voluntary, our data is incomplete and therefore, in the aggregate, unreliable.”) available at <http://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race>.

⁸ See, Public Law No. 113-242 (2014); See also, Hunter Schwarz, *Congress decides to get serious about tracking police shootings*, Washington Post, December 11, 2014, available at <http://www.washingtonpost.com/blogs/post-politics/wp/2014/12/11/congress-decides-to-get-serious-about-tracking-police-shootings/>.

⁹ See *Oversight of Federal Programs for Equipping State and Local Law Enforcement Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 113th Cong. 1-9 (2014) (statement of the NAACP Legal Defense & Educational Fund, Inc.), available at <http://www.naacpldf.org/press-release/ldf-urges-senate-committee-curb-militarization-state-and-local-police-and-impose-struct>; Testimony by the NAACP Legal Defense and Educational Fund, Inc. Before the United States Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights, Hearing on the State of Civil and Human Rights in the United States, Dec. 9, 2014, available at <http://www.naacpldf.org/press-release/ldf-urges-senate-committee-curb-militarization-state-and-local-police-and-impose-struct>.

¹⁰ Districts and states reported to have received equipment through the 1033 Program include: California (Baldwin Park; Oakland Unified; Los Angeles; Stockton Unified); Florida (Washington; Bay District; Palm Beach County); Georgia (Fulton County; Dooly County); Kansas (Auburn); Michigan (Detroit; Schoolcraft); Nevada (Washoe); Texas (Ector; Ennis; Spring Branch); Texas (Frenship; Aledo; Edinburg; San Antonio; Trinity; Beaumont); and Utah (Granite). For a list of all agencies participating in the 1033 program, see Arezou Rezvani, Jessica Pupovac, David Eads and Tyler Fisher, *MRAPs and Bayonets: What We Know About the Pentagon's 1033 Program, List of Agencies Receiving Equipment*, National Public Radio, Sept. 2, 2014, available at <http://www.npr.org/2014/09/02/342494225/mrap-and-bayonets-what-we-know-about-the-pentagons-1033-program>.

¹¹ Rick Egan, *Granite district using military M-16s to defend schools*, The Salt Lake Tribune, Feb. 20, 2014 available at <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/gallery.csp?cid=1363928&pid=1629629>.

¹² U.S. Department of Education-Office for Civil Rights, *Data Snapshot: School Discipline*, March 21, 2014, available at <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.

¹³ For example, in Ohio, African American girls received 16.3 out-of-school suspensions per 100 African American girls enrolled for disobedience, while white girls received 1.5 out of school suspensions per 100 white females enrolled for the same infraction. *See*, NAACP Legal Defense and Educational Fund and National Women’s Law Center, *Unlocking Opportunity for African American Girls*, 16-17 (2014), available at <http://www.naacpldf.org/files/publications/Unlocking%20Opportunity%20for%20African%20American%20Girls%200.pdf>.

¹⁴ *Police in Schools Are Not the Answer to the Newtown Shooting*, Joint Issue Brief, Jan. 2013, available at <http://www.naacpldf.org/publication/police-schools-are-not-answer-newtown-shooting>.

¹⁵ *See*, Office for Civil Rights Data, *supra* note 12. *See also*, NAACP Legal Defense and Educational Fund, Inc. *et al*, *Arresting Development: Addressing the School Discipline Crisis in Florida* (2006) available at http://b3cdn.net/advancement/e36d17097615e7c612_bbm6vub0w.pdf.

¹⁶ *See*, 10 U.S.C. § 2567a(a)(2) (states that the Secretary of the Department of Defense may transfer excess property to law enforcement agencies in consultation with the Attorney General).

¹⁷ James Comey, Director, Federal Bureau of Investigation, Remarks Delivered to Georgetown University about the Hard Truths of Law Enforcement and Race, Feb. 12, 2015, available at <http://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race>.

¹⁸ *Id.*

¹⁹ Implicit bias is defined as “the mental process that causes us to have negative feelings and attitudes about people based on characteristics like race, ethnicity, age, and appearance. Because this cognitive process functions in our unconscious mind, we are typically not consciously aware of the negative racial biases that we develop over the course of our lifetime.” Thomas Rudd, *Racial Disproportionality in School Discipline: Implicit Bias is Heavily Implicated*, Kirwan Institute Issue Brief, Kirwan Institute for the Study of Race and Ethnicity, The Ohio State University, February 2014.

February 20, 2015

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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

RE: Request for Public Comment on Community Policing

Dear Task Force Members:

I am writing to strongly recommend Restorative Justice (RJ) practices and programming in the Task Force's recommendations involving to the President. RJ core principles are accountability and repairing harm. RJ methods and programming span a wide variety of activities, from addressing individual crimes and the people they affect to offering a fresh perspective on how communities can move forward beyond a traumatic background or incident. RJ is focused on people and is readily adaptable to fit a variety of systems and processes.

RJ is in practice right here in the Washington, DC metropolitan area in the form of a growing public-private and multi-agency collaboration in the diversely populated Fairfax County, Virginia. I am the chair of the interagency planning committee for this Fairfax County Juvenile Restorative Justice Program. Other members of the committee are representatives from the Fairfax County Police Department, Fairfax County Juvenile and Domestic Relations District Court, Fairfax County Public Schools, Fairfax County Department of Neighborhood and Community Services and Northern Virginia Mediation Service (NVMS). The goals of this collaboration are to effectively address youth accountability following criminal behavior, bullying and discipline infractions in a manner that:

- reduces recidivism rates;
- prevents exposure to further risk factors for these already at-risk youth when possible (e.g. – direct court involvement, suspension from school);
- promotes community support for youth to become productive members of society;
- gives victims and other community stakeholders a voice in the outcome; and
- focuses on disproportionate minority contact.

Police officers refer youth to the program and have the opportunity to participate directly in order to voice their own concerns as community stakeholders. These youth, their parents, victims and police officers work together to arrive at an outcome that holds offenders accountable while directly addressing the harm caused by their actions.

The Police element of the Fairfax Program has been active for a short time; however, it builds on eight years of RJ work in the local Schools and 3 years in the Courts. This type of collaboration holds great promise in addressing public safety, reducing recidivism among youthful offenders and strengthening relationships between the Police and the communities they serve. Each RJ conference that takes place is an example of community policing in action.

As with this program, RJ is being used nationwide to address issues such as assault, larceny, property damage, internet crimes, and bullying among others. RJ can also benefit adults through processes such as community sentencing and re-entry; and it is being used in numerous jurisdictions throughout the country.

NVMS works with neighboring jurisdictions and is affiliated with both statewide and national organizations active in community dispute resolution. I would be honored to help connect any interested members of the task force with the wealth of knowledge and experience that NVMS and the rest of our field have to offer on successfully facilitating dialogue and working with individuals and communities in high conflict situations.

Restorative Justice is an ageless tradition that has been adapted for modern needs. I sincerely hope RJ is represented among your recommendations to develop effective Community Policing and create a positive model for 21st Century Policing.

Sincerely,



Megan G. Johnston, MA
Executive Director

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About NVMS:

Northern Virginia Mediation Service (NVMS) is a 501© nonprofit organization affiliated with George Mason University. NVMS has 25 years of experience delivering facilitation and dispute resolution services and collaborating with local government agencies in the Washington, DC region. NVMS has 8 years of experience specifically in Restorative Justice and coordinates the Fairfax County Juvenile Restorative Justice Program, an active collaboration of Fairfax County Police Department, Juvenile Courts, Public Schools and Neighborhood and Community Services.

Serving the Courts and Communities of Northern Virginia Since 1990



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A Checklist of Actions to Promote Police Reform and Stop Police Abuse

February 23, 2015

The Civil Rights Coalition on Police Reform, an alliance of national civil and human rights organizations and leaders committed to the protection of the rights of African Americans and all Americans, thanks President Obama for convening the Task Force on 21st Century Policing in the wake of the killings of unarmed African Americans. We extend our gratitude to the members of the Task Force for their service and for the opportunity to present our position in furtherance of the Task Force's mission. We present the following "Checklist of Actions to Promote Reform and Stop Police Abuse," and urge the Task Force to address the full panoply of these potential solutions in its final report to the President.

- ✓ Methods the federal government may impose the following reporting requirements on federal, state, and local law enforcement agencies: the number of civilians shot by law enforcement, including demographic information such as race, ethnicity, gender, and age; the number of civilians injured and killed by law enforcement, including demographic information; type and outcome of complaints and any disciplinary action taken against officers subject to the complaints,
- ✓ A comprehensive federal review and reporting of all police killings, accompanied by immediate action to address the unjustified use of lethal and excessive force by police officers in jurisdictions throughout this country against unarmed people of color,
- ✓ A comprehensive federal review and reporting of excessive use of force generally against youth and people of color and
- ✓ A comprehensive federal review and reporting of racially disproportionate policing, examining rates of stops, frisks, searches, and arrests by race, including a federal review of police departments' data collection practices and capabilities,
- ✓ A comprehensive federal review and reporting of police departments' racial profiling and racially bias practices, as well as any related policies and trainings,
- ✓ A review of the hiring standards and diversity of police forces nationwide, comparing their racial composition to the communities they serve,

- ✓ Review of federal programs that fund and incentivize the militarizing of state and local police forces
- ✓ Revised Department of Justice's Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity, to apply to local and state law enforcement agencies that receive federal funding, the Transportation Security Administration (TSA), and U.S. Customs and Border Protection (CBP), and in the national security context.
- ✓ Review and revise the Department of Justice's Guidance on the Use of Deadly Force by law enforcement officials to ensure compliance with civil rights, civil liberties, and international law,
- ✓ The development of national standards for use of force by law enforcement, investigating police misconduct, and countering overt and implicit racial bias among law enforcement officers,
- ✓ Required racial bias training and guidance against the use of force for state and local law enforcement that receive federal funding,
- ✓ Required training on mental health, disabilities, and de-escalation techniques,
- ✓ Required training on preserving the constitutional rights during large-scale public protests or incidents of civil disobedience,
- ✓ The required use of police officer Body-Worn Cameras (BWC) to record every police-civilian encounter in accordance with and policy requiring civilian notification and applicable laws, including during SWAT deployments, along with rigorous standards regarding the retention, use, access, and disclosure of data captured by such systems,
- ✓ Elimination of federal programs which provide military equipment to local and state law enforcement agencies,
- ✓ Federal incentives for state and local law enforcement agencies to review their policies, training and practices on the use of force and firearms to ensure full compliance with civil rights, civil liberties and international law,
- ✓ On the ground community training to educate residents of their rights when dealing with law enforcement,
- ✓ The elimination of the "broken windows" policing policy initiated in the 1980's which encourages overly aggressive police encounters for minor offenses and the promotion of community-based policing,
- ✓ Greater and more effective community oversight over the local law enforcement and policing tactics,
- ✓ The establishment of a law enforcement commission to review policing tactics that would include in its composition leaders/experts from civil rights advocacy groups who represent the most impacted communities,
- ✓ Review of mental health screening and counseling available to federal, state and local law enforcement, including whether agencies screen for attitudes which could result in racially-motivated police violence,

- ✓ The required suspension of police officers who discharge their weapon on an unarmed person while the agency conducts a full investigation, and the public release of the name and any history of complaints against those officers,
- ✓ The required appointment of special prosecutors to investigate and prosecute cases of police killing civilians, where credible evidence exists that the killing may have been unlawful.

Signed,

Lawyers' Committee for Civil Rights Under Law

A. Phillip Randolph Institute

Black Youth Vote

Empowerment

Hip Hop Caucus

Leadership Conference on Civil and Human Rights

Muslim Advocates

National Association for the Advancement of Colored People (NAACP)

NAACP Legal Defense Fund

National Coalition on Black Civil Participation

National Council of Churches

PICO National Network

Rainbow PUSH Coalition

WRITTEN TESTIMONY AND RECOMMENDATIONS OF THE NATIONAL URBAN LEAGUE AND ITS CEO, MARC MORIAL, TO THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING

The recommendations of the National Urban League correspond to the “10 Point Justice Plan” publicly released in December 2014.

1. WIDESPREAD USE OF BODY CAMERAS AND DASHBOARD CAMERAS

RECOMMENDATIONS:

- Pass Legislation to make the use of cameras mandatory for DOJ grant recipients, subject to appropriate standards and safeguards to ensure their effectiveness and to protect the privacy rights of citizens. For example, the “Camera Authorization and Maintenance Act (CAM Act), introduced in the 113th Congress by Representative Emanuel Cleaver.
- Safeguards recommended by the [American Civil Liberties Union](#) include: ensuring that all encounters are recorded, the public should easily know when they are recorded (e.g. a recording light), footage should be limited to authorized use and logged by officers.

FEDERAL:

- Endorse the Obama Administration’s new Community Policing Initiative Body Worn Camera Partnership Program, which would provide a 50 percent match to States/localities that purchase body worn cameras and requisite storage. Overall, the proposed \$75 million investment over three years could help purchase 50,000 body worn cameras.

STATE/COUNTY/LOCAL:

- Mayors, City Councils, and Police Chiefs should adopt policies that implement body and/or dashboard camera programs.

RATIONALE:

In the case of officer---involved homicides, there is no living injured party available to present his/her testimony to a jury. Body cameras may serve to provide necessary “objective” evidence of incidents.

Studies indicate that Body---Worn Cameras have improved the effectiveness of police operations by: (1) increasing transparency to the public; (2) helping resolve questions following an encounter between an officer and a citizen; (3) serving as a deterrent to misconduct; (4) allowing agencies to identify and correct larger structural problems within the department.ⁱ

As a result, various stakeholders have called for the implementation of mandatory body cameras and dashboard cameras, including [US Conference of Mayors](#), a [coalition](#) of 14 national civil and human rights organizations and the [Coalition of Civil Rights Organizations on Police Reform](#). However, experts caution that – in the absence of appropriate safeguards – the use of body cameras could lead to significant [privacy concerns](#) that could offset available benefits.

2. BROKEN WINDOWS REFORM AND IMPLEMENTATION OF 21ST CENTURY COMMUNITY POLICING MODEL

RECOMMENDATIONS:

FEDERAL:

- Endorse the Attorney General’s position to eliminate broken windows reform as a policing model in favor of a [Smart on Crime Initiative](#) that focuses attention and resources on the most significant and severe crimes.
- Congress should reauthorize the Department of Justice [COPS](#) program with policies to strengthen community---engaged policing rather than policing that criminalizes the poor and people of color. For example, Senator Amy Klobuchar’s bill, S. 2254, the “COPS Improvements Act of 2014.”

STATE/COUNTY/LOCAL:

- Mayors and Police Chiefs should embrace a community policing model of law enforcement, and provide visible leadership to bring communities together to support this new approach.

RATIONALE:

The broken windows model calls for heightened policing in communities evidencing visible neglect (e.g. broken windows, yet has been found to be not only ineffective in reducing crime, but contributing to the exacerbation of mistrust between communities and police officers. In fact, studies find that broken windows policy overcriminalizes the poor and homeless, covers racist behavior and targets communities of color. Instead, evidence shows that proactively and comprehensively engaging communities in policing practices yields positive results in crime reduction and the building of trust between law enforcement and citizens.

3. REVIEW AND REVISION OF POLICE USE OF DEADLY FORCE POLICIES

RECOMMENDATIONS:

- Develop a best practices “Use of Deadly Force Policy.”ⁱⁱ Revise training and accountability measures to match the policy that is transparent to all law enforcement, and citizens.

FEDERAL:

- Federal Law Enforcement Agencies should lead by example by following a best practice “Use of Deadly Force Policy.” This includes the FBI, DEA, ATF, IRS, as well as Border and Customs Patrol Officers.

STATE/COUNTY/LOCAL:

- Comprehensive review of current “use of deadly force policies” in effect to ensure that it matches the best practices “Use of Deadly Force Policy” above, and officers have the appropriate training to properly manage a situation.

RATIONALE:

Recent reviews, such as the Police Executive Research Forum (PERF) review of the U.S. Customs and Border Protection Agency (CBP) and the Department of Justice’s (DOJ) ongoing review of the Cleveland Police Division (CPD) both found that “structural and systemic deficiencies and practices—including insufficient accountability, inadequate training, ineffective policies and inadequate engagement with the community contribute to the use of unreasonable force.”ⁱⁱⁱ

4. COMPREHENSIVE RETRAINING OF ALL POLICE OFFICERS

RECOMMENDATIONS:

- Comprehensive review and redesign of basic training curriculums to integrate implicit and explicit racial bias training at all ranks of law enforcement.

FEDERAL:

- Endorse legislation that ties federal funding streams to local law enforcement to a robust training that includes explicit and implicit racial bias training

STATE/LOCAL:

- Redesign training programs for police officer, and continuing education for law enforcement, curricula to include mandatory racial bias training.

RATIONALE:

Experts have suggested racial bias training is essential as a part of ongoing professional development.^{iv} In cases where there have been incidents of police misconduct, a remedy by the Department of Justice’s consent decrees has been the training of officers, which has grown to include implicit and explicit racial bias. One of the first cities to address the training of officer in its descent decree was Cincinnati.^v It has been reported that Cincinnati is a national model.^{vi} Moreover, in a study of the U.S. Department of Justice’s investigation into local law enforcement, it has been argued that the key reforms for a police department to avoid a federal investigation are to have strong policies, ensure the policies are followed, and to have strong management and supervision of the measures.^{vii}

5. COMPREHENSIVE REVIEW AND STRENGTHENING OF POLICE HIRING STANDARDS

RECOMMENDATIONS:

- Develop and require the adoption of best practices of national minimal standards for police hiring and an accompanying national database of officers who have been hired in accordance with these standards.
- Officers that are fired from policing should not practice policing again. The Task Force should consider whether there should be a lifetime ban by taking into consideration what led to the firing.
- Require the use of the Implicit Association Test (IAT) as one of several mental tests officers are required to take. The IAT is a methodologically sound instrument as shown by nearly a decade of research.^{viii}

STATE/LOCAL:

- The variations in standards and procedures in hiring police officers make it difficult to review whether an officer has met standards if he/she should choose to move to another jurisdiction. This could be minimized if states simply shared the same minimal standards and a database of candidates that have passed these standards. As such, officers can move from state to state and have met the same standards, and not be required to spend precious dollars on going through the tests again in a new jurisdiction.

RATIONALE:

There is much variation on how each department implements their hiring policies and which policies they include. National hiring standards based on strong best practices will help ensure high quality police officers in every city.

6. APPOINTMENT OF SPECIAL PROSECUTORS TO INVESTIGATE POLICE MISCONDUCT

RECOMMENDATIONS:

- Endorse state legislation that authorizes a judge or an independent body to appoint a neutral, special prosecutor when circumstances dictate that the local prosecutor is not best suited to carry out a fair and impartial investigation.

FEDERAL:

- Rely on the Spending Clause to condition the acceptance of federal law enforcement grants upon the state's adoption of special prosecutor laws in cases relating to the use of deadly force against citizens

STATE/COUNTY/LOCAL:

- Each state should enact legislation expressly allowing the use of a special prosecutor in cases of police use of deadly force.

RATIONALE:

In the aftermath of the officer---involved killings involving Michael Brown, Eric Garner, Tamir Rice and others, there has been community outcry requesting the appointment of special prosecutors to address real or perceived conflicts of interest between local prosecutors and the police force with whom they partner to administer cases before the court.^{ix} Since criminal justice and policing power is maintained by States, state laws are needed.^x

7. MANDATORY, UNIFORM FBI REPORTING AND AUDIT OF LETHAL FORCE INCIDENTS INVOLVING ALL LAW ENFORCEMENT

RECOMMENDATIONS:

- We call for strong enforcement of the *Death in Custody Reporting Act*, which “requires states that receive DOJ grant dollars to report to the Attorney General on a quarterly basis certain information regarding the death of any person who is detained, arrested, en route to incarceration, or incarcerated in state or local facilities or a boot camp prison”, <https://www.govtrack.us/congress/bills/113/hr1447/text>.
- In addition, we urge the bill be amended to include not only police---involved deaths, but all police---involved shootings.

FEDERAL:

- Authorize and appropriate the necessary funding to carry out the mandates of the Death in Custody Act and amend the bill to include police---involved shootings, not just police---involved deaths.

STATE/COUNTY/LOCAL:

- State and local governments should lead strong efforts to comply with this new legislation, provide technical and other assistance as needed to bring all departments onboard and begin to collect and record its own records related to all police---involved shootings.

RATIONALE:

While the FBI's Uniform Crime Report indicates there have been approximately 400 "justifiable police homicides" each year since 2008, the Gun Violence Archive indicates there were over 3,000 police---involved shootings in 2014, alone. Currently there is no uniform, mandatory federal database that tracks all incidents of police---involved shootings of citizens, as a result the public lacks sufficient information to assess the true scope of the problem, or identify problematic departments and/or individual officers.

8. CREATION AND AUDIT OF NATIONAL CITIZEN DATABASE OF COMPLAINTS AGAINST POLICE

RECOMMENDATIONS:

- Enact an Executive Order or pass additional legislation creating a national database for citizen complaints. Require city, local and state police departments to adopt and follow the International Association of Chiefs of Police's (IACP) "*An Internal Affairs Promising Practices Guide for Local Law Enforcement*" (Guide), <http://www.theiacp.org/portals/0/pdfs/BuildingTrust.pdf>, to address every aspect of the Internal Affairs process, "from complaint processing to decision---making, discipline, notification, and community transparency".^{xi}
- Enact an Executive Order or pass additional legislation requiring city, local and state police departments to allow for citizen involvement in the review of alleged police misconduct to reassure the community of the accountability of the department. This can include: 1) citizen review of every aspect of citizen complaints; 2) citizen review of police determinations of citizen complaints; 3) citizen review of appeals of determinations of citizen complaints; and 4) citizen audits of the process police use to adjudicate citizen complaints, among other means to encourage citizen---involvement.^{xii}

FEDERAL LEVEL

- Enact an Executive Order or pass additional legislations creating a national database for citizen complaints, requiring city, local and state police departments to adopt and follow the IACP Guide for Internal Affairs procedures.

STATE/COUNTY/LOCAL:

- City, local and state police departments should adopt and follow the IACP Guide to ensure uniform Internal Affairs processes nationwide. In addition city, local and state police departments should allow for citizen---involvement in the review of alleged police misconduct

RATIONALE:

The manner in which citizen complaints are collected, tracked and investigated varies by department. In most cases, the adjudication and outcome of citizen complaints are not available to the public, thereby preventing access to information about problematic officers and departments and eroding public trust. According to the June 2006, *Bureau of Justice Statistics Special Report*, "Estimates from the 2002 Police---Public Contact Survey indicated that although 75% of citizens experiencing force thought the level of force used was excessive, [only] about 10% filed a complaint with the agency employing the officer(s)."^{xiii}

9. ADOPTION OF NATIONAL POLICE ACCREDITATION SYSTEM FOR MANDATORY USE BY LAW ENFORCEMENT TO BE ELIGIBLE FOR FEDERAL FUNDS

RECOMMENDATIONS:

- Endorse the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) as the official police accreditation body for the nation. Mandate that every local, county and state law enforcement agency be accredited by CALEA as a condition for receiving federal funds, and move in this direction over a five year period, to provide an opportunity for careful implementation of this requirement.

FEDERAL LEVEL

- Mayors provide guidance to all local, county and state law enforcement agencies on the benefits of CALEA accreditation and support conditioning federal funding on obtaining accreditation.

STATE/COUNTY/LOCAL:

- Currently, only approximately 1000 of the 18,000 local, county and state law enforcement agencies are accredited by CALEA, and mayors and police chiefs must lead this approach in an effort to improve local policing to the highest standards.

RATIONALE:

There is currently no mandatory national law enforcement accreditation system for the 18,000 local, county and state law enforcement agencies. The Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA)'s Accreditation Programs are considered the "Gold Standard" for law enforcement accreditation. The purpose of CALEA's Accreditation Programs is to improve the delivery of public safety services, primarily by: maintaining a body of standards, developed by public safety practitioners, covering a wide range of up-to-date public safety initiatives; establishing and administering an accreditation process; and recognizing professional excellence.

CALEA^{xiv} was created in 1979 as a credentialing authority through the joint efforts of law enforcement's major executive associations:

- International Association of Chiefs of Police (IACP);
- National Organization of Black Law Enforcement Executives (NOBLE);
- National Sheriffs' Association (NSA); and the
- Police Executive Research Forum (PERF).

10. NATIONAL COMPREHENSIVE ANTI---RACIAL PROFILING LAW

RECOMMENDATIONS:

- Urge Congress to swiftly enact the End Racial Profiling Act (ERPA). The National Urban League has consistently supported this bill. Urge states and local governmental entities to adopt anti---racial profiling legislation modeled on the End Racial Profiling Act pending congressional action.

STATE AND LOCAL:

ERPA is the most comprehensive anti---racial profiling bill advocated by the civil rights community that has reach at the federal, state and local levels, and by embracing the law, mayors and police chiefs will help to improve public confidence in local, and state law enforcement.

RATIONALE:

Racial profiling involves the unwarranted screening of certain groups of people, assumed by the police and other law enforcement agents to be predisposed to criminal behavior. Multiple studies have proven that racial profiling results in the misallocation of law enforcement resources and therefore a failure to identify actual crimes that are planned and committed. Relying on stereotypes rather than proven investigative procedures needlessly harms the lives of innocent people harmed by law enforcement agencies and officials.

ⁱ Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. Implementing a Body---Worn Camera Program: Recommendations and Lessons Learned. Washington, DC: Office of Community Oriented Policing Services. <http://ric---zai---inc.com/Publications/cops---p296---pub.pdf>.

ⁱⁱ See, U.S. Department of Homeland Security, *U.S. Customs and Border Protection, U.S. Customs and Border Protection Use of Force Reviews, Recommendations and Next Steps*, May 2014. Retrieved at (<http://www.cbp.gov/sites/default/files/documents/Use%20of%20Force%20Two%20Pager---FINAL.PDF>) (Last Accessed February 2, 2015).

ⁱⁱⁱ U.S. Department of Justice, Civil Rights Division, United States Attorney's Office Northern District of Ohio, *Investigation of the Cleveland Division of Police*, p.1. December 4, 2014. Retrieved at

(<https://s3.amazonaws.com/s3.documentcloud.org/documents/1375209/u---s---department---of---justices---investigation---into.pdf>) (Last Accessed February 2, 2015). See also, The Police Executive Research Forum, *U.S. Customs and Border Protection: Use of Force Review: Cases and Policies*, February 2013. Retrieved at

(<http://www.cbp.gov/sites/default/files/documents/PERFReport.pdf>) (Last Accessed February 2, 2015).

^{iv} Petition, *Washington Post* (Aug. 2014) <http://www.washingtonpost.com/wp---srv/ad/public/static/letter/>

^v Police Executive Research Forum, "Civil Rights Investigation of Local Police: Lessons Learned," (July 2013) http://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20---%20lessons%20learned%202013.pdf

^{vi} Schaffer, Cory "Past DOJ police edicts offer glimpse of Cleveland's future," *Cleveland.com* (June 2014)

http://www.cleveland.com/metro/index.ssf/2014/06/cleveland_police_doj_investiga.html.

^{vii} Police Executive Research Forum, "Civil Rights Investigation of Local Police: Lessons Learned," (July 2013)

http://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20---%20lessons%20learned%202013.pdf

^{viii} <http://kirwaninstitute.osu.edu/wp---content/uploads/2014/03/2014---implicit---bias.pdf>

^{ix} See Joel Rose, NPR, "Should Special Prosecutors Investigate Killings By Police?", December 15, 2014, Retrieved at (<http://www.npr.org/2014/12/15/370878778/should---special---prosecutors---investigate---killings---by---police>) Last Accessed February 12, 2015).

^x See Jack Maskell, Congressional Research Service, *Independent Counsels, Special Prosecutors, Special Counsels, and the Role of Congress*, June 20, 2013. Retrieved at (<http://fas.org/sgp/crs/misc/R43112.pdf>) (Last Accessed February 12, 2015).

^{xi} *An Internal Affairs Promising Practices Guide for Local Law Enforcement*, International Association of Chiefs of Police, pg. 3, <http://www.theiacp.org/portals/0/pdfs/BuildingTrust.pdf>

^{xii} Id at pg. 31

^{xiii} *Bureau of Justice Statistics Special Report*, June 2006, *US Department of Justice, Office of Justice Programs*, pg.4,

<http://www.bjs.gov/content/pub/pdf/ccpuf.pdf>

^{xiv} **About the Commission:** <http://www.calea.org/content/commission>; **The Board of Commissioners:**

<http://www.calea.org/commissioners/current/board---list>; **Law Enforcement Accreditation:**

<http://www.calea.org/content/law---enforcement---accreditation>

- Standards: <http://www.calea.org/content/law---enforcement---program---standards>
- Benefits: <http://www.calea.org/content/law---enforcement---program---benefits>
- Cost: <http://www.calea.org/content/law---enforcement---accreditation---cost>
- Eligibility: <http://www.calea.org/content/law---enforcement---program---eligibility---criteria>
- Process: <http://www.calea.org/content/law---enforcement---program---process>

Written Testimony Before the President's Taskforce on 21st Century Policing

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February 25, 2015

More than 250 years ago the Enlightenment philosopher Cesare Beccaria admonished that, "It is better to prevent crimes than punish them." I recently co-authored an essay with Cynthia Lum of George Mason University titled "Reinventing American Policing: A Six-Point Blueprint for the 21st Century." In it we lay out an ambitious blueprint for reorienting policing toward Becarria's goal and in so doing reducing both arrests and imprisonment. The blueprint also aims to advance another important objective of policing—maintenance of high levels of credibility and confidence in the police among the public they are sworn to protect. Both objectives form the bedrock of effective policing in a democratic society.

U.S. criminal justice policy of the past four decades institutionalized many characteristics of criminal justice system that we see today. For law enforcement, arrest became a central measure of performance and success and, in turn, imbedded into organizational culture, training, promotions, and assessments. Even ideas like "broken windows" policing (Wilson & Kelling, 1982) that were preventative in intent, were applied in ways that police knew best: zero tolerance and arrest for even the most minor of crimes (Martinez, 2011).

Reorienting police practices towards crime prevention and improving community trust and confidence requires important changes in the functions, values, and operations of law enforcement. The six-point blueprint that we lay out for achieving this re-orientation is grounded in decades of research and experience. It also reflects the evolution of expectations of policing in advanced democratic society. In this regard, two principles guide our blueprint:

Principle 1: Crime prevention—not arrests—is paramount. Crimes averted, not arrests made, should be the primary metric for judging police success in meeting their objective to prevent crime and disorder.

Principle 2: Citizen reaction matters. Citizen response to the police and their tactics for preventing crime and improving public order matter independent of police effectiveness in these functions.

Principle 1 follows from Beccaria's observation that it is better to prevent crimes than to punish them. Punishment is costly to all involved—society at large which must pay for it, the individual who must endure it, and also the police whose time is diverted from their crime prevention function. While arrest plays a role in the crime prevention, arrest also signifies a failure of prevention; if a crime is prevented in the first place, so is the arrest and all of the ensuing costs of punishment (Nagin, Solow, and Lum, 2015).

Principle 1 does not suggest that police should stop making arrests. An important function of the police beside the prevention of crime is to bring perpetrators of crime to

justice. Further, police cannot possibly prevent all crimes. However, over the past three decades a steady accumulation of evidence suggests that proactive prevention activities are more effective than reactive arrest in preventing crime. Proactive policing activities focus police efforts on those people, places, times, and situations that are at high risk of offending, victimization, or disorder. Proactive policing stands in sharp contrast to reactive approaches in that it tries to address problems before they beget further crimes through a wide variety of strategies that often do not emphasize arrest, especially for minor crimes. Thus, in this first principle, we suggest greater emphasis on proactive and preventative deployment strategies than arrest-based deployment strategies.

Principle 2 emphasizes that police in democracies are not only responsible for preventing crime but also for maintaining their credibility with all segments of the citizenry. The objective of maintaining citizens' trust and confidence means that the reaction of the citizenry to the police is important to judging their effectiveness independent of their success in preventing and solving crime. While citizen trust and confidence may facilitate police effectiveness in preventing crime, we treat trust and confidence as an independent criterion for judging their performance because the overriding objective of police should be to create a safe democratic society, not a safe police state.

In emphasizing the importance of citizens' confidence and trust in the police, we are fully cognizant that police-citizen encounters may be hostile through no fault of the police officer. These encounters may involve persons known to have committed serious crimes or who are in the process of committing a serious crime, and that encounters may involve real threats to the safety of police officers or innocent bystanders. However, even in these circumstances, the person who poses the threat or who is responsible for hostile interaction does not forfeit his or her status as a citizen even if his/her behavior provides a legal basis for arrest or even a lethal police response if necessary. Indeed, the "professionalization" of the police was to ensure that the response to perpetrators was not only lawful but also conducted with fairness and dignity.

In putting forth these two principles, we are also cognizant of the difficulty of what must be done to achieve them. The three functions of police that we have alluded to above—preventing crime; bringing the perpetrators of crime to justice; and maintaining their credibility and trust with the public they are sworn to protect—are each significant in their own right but also are highly dependent upon one another. If police are ineffective in the role of apprehending the perpetrators of crime, their effectiveness in their prevention role may be eroded. However, commitment of time and resources to apprehending the perpetrators of crime, particularly if they are minor, may come at the expense of the crime prevention function. While maintaining trust and credibility within the community is also tied to the ability of the police to prevent crime and bring perpetrators to justice, the same trust may be eroded when police spend too much time arresting individuals for minor crimes or stopping and frisking significant swaths of the population. However, recognition of the difficulty of what must be done to advance these principles should not be used as an excuse for dismissing their pursuit as quixotic.

A six-point blueprint for reinventing American policing

As discussed in the full essay crime clearance rates for serious crimes have remained largely unchanged for more than four decades despite large changes in the index crime rate over this period. In our judgment, opportunities for major improvements in crime solution rates and therefore in effectiveness in bringing the perpetrators of crime to justice are unlikely. Innovations in forensics and other technologies may ultimately produce significant improvements in solution rates, but we are skeptical of that happening anytime soon. Thus, the focus of our recommendations is on crime prevention and citizen confidence.

In brief the six blueprint items are:

1) Prioritize crime prevention over arrest

Arrests are costly to all involved—society, the police, and the person arrested. Even for arrests for serious crimes it is important that police broaden the organizational response to more than justifiable congratulation (assuming the arrestee is guilty) to asking the question: Is there anything that we, the police, could have done to prevent this crime from happening in the first place? Accordingly, we recommend that police focus their efforts, reforms, and resources on what we call sentinel-like activities that prevent crime and in so doing avert the need for arrest and all its ensuing costs (Nagin, Solow, & Lum, 2014).

2) Create and install systems that monitor citizen reactions to the police and routinely report results back to the public and also managing and line officers.

This blueprint item involves two important components, both in support of Principle 2. The first component is routinely, systematically, and rigorously surveying citizens on their reactions to the police in general and to specific tactics. The second component is to regularly report back to both citizens and officers the results of the survey and actions that will be taken to support favorable citizen responses and to remediate negative responses.

3) Reform training and redefine the “craft” of policing

The content of police training depends on what trainers and their agencies define as the “craft” of policing, which is shaped by beliefs and expectations of about the function, purpose, and methods of good policing. If officers are trained and socialized to believe arrest is the primary purpose of policing and its measure of success, then the craft of policing will emphasize and reward the skills and statistics associated with arrest. Similarly, if officers are trained and socialized to believe prevention and community welfare are important goals of policing in addition to the arrest of the perpetrators of serious crime, then the craft will be shaped by these expectations.

4) Recalibrate organizational incentives

Reinventing policing towards the above principles also requires altering organizational incentives. Rewards, promotions, incentives, and informal “pats on the back” shape the expectations and tendencies of both leaders and the rank and file. Thus, the metrics used for the judging performance from the line officer to the chief executive

must include measures of knowledge of approaches for effective crime prevention and maintenance of citizen confidence and success in applying those approaches.

5) Incorporate the analysis of crime and citizen reaction into managerial practice

Advancement of blueprint Items 1 and 2 will require that all law enforcement officers from the patrol-level to the chief executive have access to analysis of crime location and trends and the effectiveness of police tactics. This will require a substantial beefing up of the resources committed to and the standing of crime analysis units within police departments. It will also require expanding their charge to collecting and monitoring data on citizen reaction to the police.

6) Strengthening national level research and evaluation

Just as advancement in medical practice depends on a robust system of medical research and dissemination with institutions such as the National Institutes of Health in the U.S. and the Medical Research Council in the U.K. at its core. A comparably robust infrastructure of research and dissemination on what works in policing is required to advance our blueprint.

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To the Members of the President's Task Force on 21st Century Policing,

I. Historical and Ideological Introduction

There seems to be a long-standing tradition in this country that involves distributing governmental power among as large a number of persons as can remain effective in completing governmental duties. This tradition goes all the way back to the writing of the constitution which distributed powers by utilizing a *Separation of Powers* paradigm. This distribution has frequently been done in conjunction with governmental checks and balances that keep the overall balance of power on an even keel. That is to say, a balance of power where no individual or groups of individuals have too much power over other individuals or groups of individuals. Central to much of the efficacy of these checks and balances is the involvement of the citizens of our country. A concerned, informed, and active citizenry has served to help our country maintain the possibility of liberty and happiness for every citizen. The well balanced distribution of power with an informed and active citizenry helps to protect the rights we cherish in pursuit of our liberty and happiness.

In order to have an informed citizenry our country has maintained institutions like schools and libraries that grant all citizens access to information and help attaining functional linguistic and civic literacy. Our country has also enacted laws such as the Freedom of Information Act (FOIA) which mandates that citizens have access to certain types of information about the federal government. States also have often enacted rules mandating a minimum level of transparency in their governmental endeavors with open meeting and public records laws. Transparency within the government has always been a high priority in our country. This priority seems designed to allow citizens to remain informed so that the citizens may continue to stave off the oppression that creeps into any organization with great power over people. The encroaching oppression that we, as a country, originally fought off during the revolutionary war is never completely

eradicated. We continue to fight encroaching oppression with every action we take against unfair actions made by government. All people are imperfect. People with governmental power are no different. It is our common imperfections that can readily translate into the misuse of governmental power vested in people. With an involved and active citizenry some resistance to the encroaching oppression, oppression that grows from those imperfections, can sometimes be stopped. The more information available to involved citizens, and the more citizens involved, the better the chances that the encroaching oppression will be sometimes stopped.

II. Personal Experiences

Over the last decade I have personally been involved in some circumstances of encroaching oppression. This oppression involves governmental actions in multiple cities, counties, and states. While in this letter I will not go into great detail about the acts of encroaching oppression which I have experienced, I will provide some information about them so that the task force may know which experiences have contributed to the formation of my opinion about suggestions to this task force. I understand the good of many countless acts done in the furtherance of the order of law. The suggestions I am offering are about stopping encroaching oppression that finds its way into institutions that have the difficult duty of maintaining the order of law. These suggestions may then actually help to further the true order of law which, in itself, attempts to resist the encroaching oppression that creeps into even the institutions that have the duty of maintaining the order of law. I think it is with the furtherance of the true order of law that the governments of our nation will continue to help the citizenry in its pursuit of liberty and happiness. In the rest of this letter I will focus on what I think can be done to further the true order of law by describing two separate sets of acts involving the misuse of governmental power that have contributed to my sense of what may be done to help further the true order of law and by making suggestions for what can be done to help further the true order of law.

At times it seems that I have been nearly alone in my resistant to the acts of encroaching oppression that have not only directly affected me but also indirectly affect many of the people living in the same areas as myself. These acts have included abductions, assaults, and the manipulation of information that should be available to the public . With seemingly little support for my efforts to stop the encroaching oppression, I have found myself quite limited in what I could do to investigate the nature of the bad acts, the motives of the people performing the bad acts, the evidence of the bad acts, and any ways of stopping the bad acts. Accordingly, much of my investigation has consisted of acquiring whatever records the various involved governments have been willing or able to provide. I had hoped that the records would greatly inform me about how I may proceed to stop the encroaching oppression. While the records have provided some of this type of information, my efforts to become informed (by information in records) has most often been fruitless. I have however learned what is perhaps an even more important type of information. I have learned that (inspite of our tradition of distributing power among many people so that no one has too much power) there remains an often unnoticed area of governments where a small number of people wield an inordinate amount of power. That often unnoticed area is in the area of government where people are assigned the duty of providing records. It is in this area that our citizenry may become more well informed about the details of the real world operation it's governments, but it is also in this area where just a few people can stop multitudes of citizens from gaining that information. Therefore a group of concerned citizens, that would otherwise be able to remain empowered and active if they only had information they could act upon, becomes stifled. That is to say that perhaps the most important parts of our local and national systems of order (that part that is a concerned, active, and informed citizenry) can be stifled by the few people in the areas of government assigned the duty of providing records.

It has been my experience that where I would otherwise have access to information which would be a scathing indictment of bad acts, I instead find altered information, false information, delayed information, or outright denials of access to

information. While I did not expect those who performed the bad acts to list their indiscretions in the public records, I did expect that the process of gaining access to public records would not be so fraught with persons and behaviors that would serve to obscure the bad characteristics of the bad acts.

It does not seem possible to explain the specific details of the obscuring behaviors without going into great detail about acts involving the misuse of governmental powers that have contributed to my sense of what may be done to help further the true order of law. I am including information that can direct you to court documents where I have written at great length about one set of bad acts. Those court documents include much information about how people in the area of record keeping and record providing are helping to obscure the bad characteristics of bad acts.

The first set of bad acts I will describe is the set that has associated court documents. This set of bad acts began in Yavapai County of Arizona. The misuses of power involved persons in the public sector, assaults, abductions, an indictment of myself, prolonged captivity, and a subsequent case that began in Yavapai County Superior Court. These assaults and abductions were primarily by persons working in the Sheriff's Office. All the persons in the public sector worked in either the Sheriff's Office, the Public Defender's Office, the County Prosecutor's Office, or the Yavapai County Superior Court. I advanced the subsequent case to the Appeals Court of Arizona, to the Arizona Supreme Court, and eventually the United States Supreme Court. Accordingly, the United States Supreme Court case number that can be used to acquire the information I have provided to the courts about these misuses of power is No.14-6854 (Nuno Miguel Rocha v. Arizona). I direct you to the "Petition for a Writ of Certiorari" in that case. I personally authored and submitted that petition. It has much information about how public records were maintained and withheld or altered toward the purpose of obscuring the bad characteristics of the bad acts.

The other set of bad acts which I will describe began in Phoenix, Arizona. These acts involved persons in the public sector, two primary assaults, and brief abductions

proximate to the assaults. The persons in the public sector worked in the Phoenix Police Department. These assaults and abductions were committed by Phoenix Police Officers and were followed by periods of other Phoenix PD personell obscuring the bad characteristics of the bad acts while I sought information and assistance from the Phoenix Police Department. There was also a period of years between the two assaults. After the first assault I suffered lesser injuries than the second assault. After the first assault, and that first following period of seeking help from the Phoenix PD, I returned my primary focus of efforts to the events of the Yavapai County because the case I had advanced to the higher courts was still ongoing and I had gotten nearly nowhere with the Phoenix PD. After the second assault I returned much of my focus to the Phoenix PD. No one at the police department ever seemed willing to assert the existence of any record of the events of the first assault, or any recollection of my efforts to get help following the first assault. I persisted in seeking help after the second assault and found an unwillingness to provide me with timely assistance in accessing records and substantial assistance in investigating the police officers who had assaulted me. The Phoenix Police Department's Professional Standards Bureau did purport that they eventually performed an investigation after I contacted them, but claimed to be unable to find any wrongdoing. I have more recently requested as complete a record of the Professional Standards Bureau investigation as the police department can provide, but have yet to receive that record in spite of repeated efforts on my part. This second attack occurred on 8/29/2012 and I still have serious lingering injuries. The individuals who assaulted me on these two separate occasions, and over a span of several years, have thus far escaped justice.

Beyond these descriptions of sets of events, I can demonstrate what the experience of many bad acts has been like for me. I have kept often meticulous personal records of misuses of power against me, my efforts to stop the misuses, my efforts to acquire records, and the documentation provided to me by the involved governments. If the task force finds it helpful I can provide reams of these personal records (digital or physical) and provide further feedback about my experiences so that the task force can gain some detailed knowledge of how the misuses of power are occurring in real world circumstances.

III. Suggestions Summary

While I wish I could provide more specific suggestions, I am primarily stating that I think that this previously explained category of public record keeping and record providing should be a significant focus of the task force when it pursues and makes its recommendations. I think it should be a significant focus because of all the reasons I have already stated and the following:

- **High Cost Effectiveness**

Finding a way to ensure that timely, relevant, and detailed information is available to numerous masses of citizens can help many people to be involved in asserting the true order of law at nearly no cost additional to what it simply takes to ensure the availability of the information. Ensuring the availability of the information is made easier because it is already mandated that much information be made available to citizens. It is merely the practice of providing the information that often suffers from the imperfections.

Citizens often become concerned when the misuse of power effects their lives. This means that there will be a ready and motivated group of citizens to counteract any encroaching oppression when it rears its head. To be able to help to provide the information those citizens want and can use to fight the oppression would serve to greatly assist them and the true order of law at a low cost.

- **It is an Inherent weak point in commission of Oppressive Acts**

The processes of providing public information to citizens serves a process where the government has a duty to answer to citizens directly. This provides immediate accountability to the citizens governments are required to serve. I have been forced to endure heinous circumstances partially because the appropriate public information has not been provided to me. This information, which would likely be a scathing indictment of bad acts, might often be denied to persons who have suffered through bad acts. If governments fail to provide the public information it still serves to demonstrate the

existence of hidden misuses, even if the nature of the misuses remains hidden. The more difficult it is to hide the information the more obvious the hidden misuses become and perhaps even the nature of the misuses may start to show. Either way, an emphasis on pressuring the release of timely and accurate public information helps to take advantage of this weak point in oppressive acts.

- **Helps Protect Good Intent of Civil Servants**

In my interactions with various governments I have sometimes had the sense that some public sector servants would really like to do more to help me. However, I also get the sense that they feel stifled because any effort to help me would put them in a vulnerable position of also having to deal directly with the persons committing the bad acts while they themselves may also not get much support. If masses of citizens are aware of the existence of the bad acts, these well intended public sector servants may feel safer in confronting the persons committing the bad acts because the well intended servant would then have the knowledge that any retaliation against them for helping the victims of the bad acts would be known to masses of people as the unfair retaliation that it truly is instead of allowing the retaliation to be obscured as incidental firings, or reassignments, or rescheduling, or loss of benefits, etc.... With the unshackling of these well-intended public servants and masses of informed citizenry, the further encroachment of oppression would also be greatly stemmed.

- **Puts Pressure to Scrutinize All Acts to Ensure Imperfections Are Not Present**

With the unshackled well-intended public servants, and the involved masses of citizens, an immense amount of pressure would be put on anyone prone to committing bad acts. This pressure would serve to help ensure that each person scrutinized their own actions to make sure that the encroaching oppression of imperfections was not creeping in to their own acts because the consequences for such imperfect bad acts would be likely to effect each person when they do commit a bad act.

IV. Conclusion

For all the reasons included in this letter and all the experiences I have had (which are detailed the aforementioned court record and my personal record), it is my suggestion that a special emphasis be put on assuring that information about the activities of governments be readily provided to involved and concerned citizens.

I hope a way can be found to help make sure the channels of public information dispersal cannot be corrupted by a few persons. This way may include adding serious consequence for the impeding of the channels. These consequences may be for the individuals doing the impeding or institutions that do not prevent individuals for impeding the channels. This way may include an of a number of individual or group incentives and disincentives. This way may involve standardization of providing information so that citizens can more easily recognize when standards are not being met. I think that any way that can be found to bolster access to our public information would be a great way to bolster the true order of law.

I am not certain of where my physical address will be if and when the task force may decide that my further feedback might be useful. I am not sure if my address will be the same as the return address listed on the envelope containing this letter. I am not sure of what my physical address will be because I will be traveling and seeking medical assistance for my lingering injuries, medical assistance that I have not been able to find in Arizona. However, my email address ([REDACTED]) and phone number [REDACTED] will most likely be the same.

Thank You and Good Luck,

Nuno M. Rocha

Lessons of the Weed and Seed Strategy

Robert M. Samuels, PhD

(former Acting Director of the DOJ Office of Weed and Seed, 2002-2004)

The Weed and Seed strategy was developed in 1990 as an effort was made to develop an anti-drug and violent crime initiative that would incorporate the best practices of the Department of Justice, in coordination with other federal agencies, other levels of government, community leaders and the private sector. Weed and Seed was to be not just a grant program but a strategy in which grants play a role. Weed and Seed is primarily a coordination strategy for governmental and private sector action--both law enforcement ("weeding") and crime prevention ("seeding"). It also encompassed the demonstration of promising techniques such as: 1) federal-state-local law enforcement efforts/task forces to protect communities from the most serious offenders; 2) community policing; and 3) coordination of government and private sector planning and funding and services for greater overall efficiency and effectiveness of crime prevention and improvements in the quality of life. The "Weed and Seed" metaphor was inspired by one of the location of a prototype effort in the Spring Garden area of Philadelphia.

The key elements of the strategy are as follows:

- Focusing resources on high-crime neighborhoods
- Comprehensive approach, including law enforcement, community policing, prevention/intervention/treatment, and neighborhood revitalization
- Coordination of resources already allocated or in place: federal, state, local, the private sector, and community leaders and residents
- Allocation of additional federal resources for limited ends

With its comprehensive approach, Weed and Seed helped get beyond the either/or approaches that had dominated the criminal justice debate. Weed and Seed would deal with both the root causes of crime and it would enhance crime control.

Focusing on High-Crime Areas

Following the pattern in which many other federal programs are developed, Weed and Seed had a conceptualization stage, a pilot/demonstration stage, and then an institutionalization stage.

Focusing on high-crime areas is appropriate in a number of ways. Those areas have the greatest need of improvement and program planners hoped that the concentrated application of federal resources would demonstrate improvement in a relatively short time. Limiting the size of the target area also made the projects more manageable—the number of problems is limited, and the number of people at the table who have to agree is limited. Weed and Seed sites were to be just a few square miles in size.

Not all high-crime areas, however, are good candidates for the Weed and Seed approach. There needs to be effective and resilient local leadership in the community that can be leveraged. It was interesting to see how effective leadership varied from site to site. It sometimes came from the city's mayor or police chief, or a community leader or activist, a school, or a hospital. In many cases, leadership came from local leaders in the faith community. As Attorney General Reno instructed in dealing with Gary, Indiana, "Work with the ministers." In other cases, the leaders have been secular.

Recognizing the Comprehensive Scope of the Problem and the Solution

The answers we get naturally reflect the questions we ask. The questions that the Weed and Seed strategy asked were wide-ranging, relating not only to criminal acts, but also relating to their causes and cures. Weed and Seed asked questions in a comprehensive way, and aimed to develop comprehensive strategies to reduce crime and improve the quality of life. Weed and Seed understood these goals to be interrelated.

The causes of crime are complex and interconnected. The levels of analysis appropriate to the understanding of crime include the individual, the family, the community, and the larger political community. Also, the way in which laws and law enforcement are structured will have an effect on deterring and controlling criminal behavior: harsh enforcement without community engagement can actually hurt effective policing by drying up the sources of cooperation and information needed for investigation and prosecution. The "professional model" of policing which sought to separate police from the community needed the corrective provided by community policing, which was effectively a return to a "cop on the beat" approach.

Coordination of a comprehensive range of responses follows from this comprehensive understanding of the problem. Coordination of services is a rational way to proceed: it seeks to make the most efficient use of scarce resources; and it takes into account the inevitable interaction of related types of activity affecting schools, jobs, health, infrastructure, the environment, the faith community, and mores.

One of the key insights behind Weed and Seed is that the effective delivery of social services in high-crime areas depends on law enforcement making it safe enough for practitioners to be willing to enter the target area. Visiting nurses have to feel safe enough in public housing to provide services there; Boys and Girls Clubs can only help local children when the children feel safe enough to attend, and the staff feels safe enough to report to work.

Coordination as the best way to maximize efficiency and effectiveness of federal programs was one of the overall themes of Weed and Seed. This meant coordination among DOJ programs; and coordination of DOJ programs with other agencies' programs. In addition, a new program is helped considerably by having a new office dedicated to implementing it.

Coordination between DOJ and other federal agencies was in terms of information sharing, joint planning, and coordinated budgeting. At the federal level, leadership has to come from the Executive Office of the President, especially the Office of Management and Budget (OMB). After all, the federal budget process is an important way in which government priorities and processes are shaped and resourced. Nonetheless, coordination of separate appropriation accounts is hard to achieve.

At the local level, the challenge of coordination was taken on in a variety of ways. If leadership was forthcoming from a city government, the mayor's office was an active participant in coordinating the roles of the police, schools, parks and recreation departments, and hospitals. In effect, Weed and Seed was the "How to assist a mayor" program. Mayors had to balance the resources directed to Weed and Seed areas with the demands of other areas of the city, and often saw federal assistance like Weed and Seed as a double-edged sword. In a number of cases, Weed and Seed was embraced by newly elected reform-minded mayors who saw Weed and Seed as a way of helping them reform and revitalize their cities.

The Weed and Seed Strategy

One of the basic principles of Weed and Seed is that it is a *strategy*, not a just a *program*. The strategy concept emphasizes the way in which coordination of the use of *existing resources from all levels of government and the private sector* is a key part of Weed and Seed. Its programmatic aspect included federal grant funding.

The Weed and Seed strategy had four basic elements:

1) Enhanced Law Enforcement. This element included federal/state/local task force activity to identify major offenders and remove them from the community. The federal contribution in this effort was assistance from federal law enforcement agencies. These measures were designed to protect communities from the most hardened offenders who terrorize their fellow citizens. This part of the strategy can only have a limited effect, however, and needs to be followed up with substantial "seeding" efforts.

Nonetheless, coordination with federal law enforcement brought to bear the significant resources of the U.S. Attorneys' Offices. A number of other US Attorneys spent considerable efforts on helping coordinate the locally-based part of the program. The 93 U.S. Attorneys are distributed geographically so as to be potential local leaders for a program like Weed and Seed. Many of them helped implement the federal law enforcement element of the strategy, aided by their Law Enforcement Coordinators (LECs), whose job was to help coordinate law enforcement activities and training at the federal, state, and local levels. Weed and Seed coordination built on these people and their networks to coordinate with other agencies and groups the range of programs and activities starting with, but ranging far beyond traditional law enforcement. The U.S. attorneys and LECs were often key local leaders for DOJ in each Weed and Seed Steering committee. They reached out to other local leaders to join steering committees and dedicated the administrative resources of their offices needed to hold the many

meetings which Weed and Seed coordination called for. The U.S. Attorney Offices also provided reliable vetting for potential local partners and potential recipients of federal grant funding.

U.S. Attorneys and their staffs did an enormous amount of work selecting and recruiting constructive community members, cajoling reluctant community members, vetting appropriate partners, and keeping a watchful eye on program management. A number of U.S. Attorneys came to see Weed and Seed as an effective way to improve community relations. Their participation did a lot to deter and control not only violent crime, improper activity at the local level involving Weed and Seed grantees and coalition participants.

Nonetheless, local leadership is the key to the success of a program like Weed and Seed. Without it, no amount of money would do the job. The wide range of the Weed and Seed strategy provided multiple opportunities for finding the requisite local leadership. Sometimes it came from community leaders and residents, sometimes from local religious or business leaders, and sometimes from local law enforcement and/or political officials or their staffs.

2) Community Policing. This return to the “cop on the beat” approach of many years ago was being tried out in some communities, but was still regarded with skepticism by most departments that had adopted the more distant approaches of withdrawal from community coupled with response to emergency calls. Those approaches, however, resulted in increased alienation between communities and police, and less information for police to do their job. Police officers assigned a particular beat have more of a personal investment in the well-being of that area and of the people who live there. Interactions between community policing officers and community members include constructive interactions between people who work together to solve problems, rather than the force-laden confrontations of strangers. The Weed and Seed program, with its limited scope and additional funding, allowed police departments to try out community policing on a limited basis before making a depart-wide commitment, and this helped the spread of community policing.

Community policing typically holds events such as cleanups and cookouts and health fairs. These events may not look like policing to some observers, but they provide an earnest of police contribution to community well-being and the community gets to relate to police officers as people and pass specific information for law enforcement to them.

3) Prevention, Intervention, and Treatment. Prevention of substance abuse was one of the basic objectives of Weed and Seed, and at least one-quarter of the Weed and Seed budget was typically counted as part of the Office of National Drug Control Policy (ONDCP) “drug budget” estimate. But Weed and Seed prevention efforts extended to crime prevention generally. One of the key approaches required of all sites for many years was the establishment of a “safe haven.” That is a place where children could do their homework in a safe place, and thus be secure from victimization after school. Participation in constructive activities would also help divert them from any criminal

activity, which tends to peak in the afterschool hours. The more constructive activities that could be marshaled, the greater the potential for a safe haven to be a community center where adults could come for GED courses as well. Anti-drug programs such as the Navy's Drug Education for Youth program became partners with Weed and Seed, as did the Drug-Free Community Program and its governmentally sponsored private-sector partner, Community Anti-Drug Coalitions of America (CADCA). The Department of Health and Human Services' Center for Substance Abuse Prevention became a key partner, especially under the leadership of Beverly Watts Davis, who had been a Weed and Seed coordinator in San Antonio, Texas. A partnership with the AmeriCorps Program helped provide manpower for local safe havens and related prevention efforts. National Guard Drug Control Coordination staffs also provided resources. Toward the end of the Clinton Administration and extending into the second Bush administration, programs directed at helping people re-enter civil society upon release from prisons became part of the strategy; given the difficult goal of helping people change their way of life, faith-based partners were a significant part of this effort.

4) Neighborhood Restoration. There are several components to this element, including community cleanups and economic development. Community cleanups result in a visible improvement that shows community residents what good can be done; that people in the Weed and Seed coalition care about their area; and that give a sign to would-be criminals that helps to deter further criminal activity—"fixing broken windows" (cf., *infra.*, George L. Kelling and Catherine M. Coles, Fixing Broken Windows, New York: The Free Press, 1996). The Keep America Beautiful Campaign's Anti-Graffiti program was a partner in several Weed and Seed sites.

A wide variety of economic development approaches were employed: loans and technical assistance to small businesses in creating jobs; reducing licensing requirements which limited economic opportunity; drug-free workplace and minority chamber of commerce programs; job-training programs of the Department of Labor and EPA's environmental careers training program; business improvement districts; Empowerment Zones; EPA's Brownfields funding program, which could help older cities turn environmental problem areas into more attractive investment opportunities; and privately initiated community development efforts, like the Local Initiative Support Corporation (LISC).

On the national level, spreading funds over more congressional districts helped congressional support remain strong for the program, as it remained something that many members of Congress could show they helped provide for their constituents. One of the successes of Weed and Seed is that Weed and Seed appropriations were very rarely raided for earmarks.

Phases of Strategy Implementation

Law enforcement sweeps or crackdowns will only have an effect limited in time. The enhanced level of force cannot be sustained because it takes more money and manpower than police departments can provide on a sustained basis. It can, however,

provide an opportunity for community leaders to demonstrate some limited success in improving public safety, which will enable them to recruit community support that is the key to long-term success.

Weed and Seed sought in a number of ways to build a local coalition, or strengthen existing local coalitions, whose commitment to fighting crime and improving the quality of life are essential to the long-term success of the strategy. Developing community support is a multi-year process. There is always a history in communities, and in many cases, it is a history of broken promises and disappointments.

Federalism and limitations on federal resources limit federal programs to providing models, research, and incentives for states and localities to adopt best practices. It is up to those governments to sort out the ones they chose to keep and fund themselves. After all, over 90% of expenditure for law enforcement overall is at the state and local level.

Weed and Seed succeeded in coordinating with a number of other federal agency programs over the years: the “Step-Up” job training program, coordinated by the Department of Labor with participation by HUD and EPA; EPA Brownfields cleanup and development funding; Corporation for National and Community Service funding, which brought AmeriCorps members to a number of Weed and Seed sites; Education Department programs to improve schooling and after-school programming; HUD Drug Elimination Grant funding, which supported drug enforcement efforts in and around public housing; the Navy’s Drug Education for Youth (DEFY) program; the National Guard’s Counter-Drug Coordination program; the Treasury Department’s VITA (Volunteers Income Tax Assistance) program to encourage filings for Earned Income Tax Credits; HHS substance abuse prevention programs and community service block grant funding; and multi-agency re-entry funding to assist in the rehabilitation of released prisoners. This was in addition to coordination within DOJ with the Asset Forfeiture program, the FBI Safe Streets and Gang unit, the DEA, Organized Crime Drug Enforcement Task Force (OCDETF) program, Community Oriented Policing Services (COPS) Office, Community Relations Service, Civil Rights Division, Environment and Natural Resources Division, and other offices within OJP (the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crimes, the Bureau of Justice Statistics, and the National Institute of Justice).

Long-term funding at a low level is a better incentive for community commitment of resources and buy-in while avoiding local empire building. Even a small amount of funding served as core funding, which was enough to attract matching funds from local sources. The federal funding also often went to fund the position of a Weed and Seed coordinator, who was charged with making the strategy work at the local level. The coordinator was expected to mobilize the coalition of local government officials and community leaders and residents to work together on crime and, as result, other problems as well.

One of the successes of this aspect of the program is that race relations were improved in troubled areas. Indeed, Weed and Seed sites were on a number of occasions initiated

based on the recommendation of the DOJ's community Relations Service. One of the flashpoints in race relations was the treatment of minority urban populations by white police officers. Weed and Seed helped improve race relations in a number of ways:

1) by tying quality of life improvements to law enforcement as an essential part of the Weed and Seed strategy, Weed and Seed helped improve the minority community's perceptions of law enforcement from simply a negative application of force to one tied to community improvement.

2) by bringing together working groups –“steering committees”—at the local level that were required to have members from the community as well as local governmental structures, working relationships and trust were developed between local officials and minority community leaders. These relationships were effective in helping to de-escalate situations in which a minority community was outraged at suspected police misconduct. In Indianapolis, for example, black ministers who had developed working relationships with the local police were able to prevent violence by telling their parishioners that they would find out the facts and ensure a fair disposition of suspected police misconduct cases. They were also able to intercede with police officials to get them to change practices that the black community found to be a source of discord. Part of the success was in demonstrating that police officials were willing to work with minority community leaders, which was a demonstration of respect that went beyond any particular practice at issue. Similar results occurred in communities with Hispanic and other minority populations.

Supplementing Federal Funding

From its earliest days, the role of funding in Weed and Seed was an issue of debate. The initial Weed and Seed concept developed by a committee of DOJ and other Executive Branch officials was a set of best practices that would be funded.

In 1992, the DOJ's Office of Policy Development came up with a second (unfunded) track for Weed and Seed. In this approach, DOJ would review applications for Weed and Seed strategies from localities and provide “Official Recognition” instead of grant dollars. Part of the impetus for this approach was simply the lack of enough dollars for strategies that showed a lot of promise. It evolved into a good mechanism for testing the seriousness of commitment and good planning in applicant cities, so that if additional grant dollars became available, a ready group of likely good investments was ready to make good use of the money. Indeed, it became apparent that one or more years of planning together and local organization was a way of making federal dollars more effective. It also gave localities a sign of validation from the federal government that their efforts were on track, which helped local morale. In a number of cases, community groups advised the Weed and Seed office that the first years of developing an application were very effective in building working relationships. The irony is that the hope of funding was in some cases more useful than the funding itself when it finally was awarded, especially if people then started to fight over the money. Nonetheless, this is another example of the importance of inspiring hope as a means of helping communities

rally their own forces.

Even skeptics of federal funding recognized that public perceptions equated seriousness with the allocation of funding: some level of federal funding was necessary to demonstrate that Weed and Seed was serious and should be taken seriously by community members and local governments. Likewise, Weed and Seed sites used small amounts of funding as “earnest money” to demonstrate their commitment to community improvement beyond the level of a merely verbal commitment.

Budgeting for the Weed and Seed program raised a number of interesting challenges in all administrations. To the extent that the President’s budget process could do the work of coordinating funding streams in the proposed budget, that would save an enormous amount of time that agencies otherwise had to spend crafting and implementing funding transfers. The statutory basis of the budget also helped avoid authorization questions that arose when DOJ funds were used for activities across the domestic agenda in a comprehensive strategy.

A variety of types of funding and recipients were used in Weed and Seed. One type of grant funding is the block approach, in which funds are apportioned among states by a formula, e.g. population; each state then has a process for allocating funds among statewide programs and localities. New demonstration programs like Weed and Seed, however, are typically started as categorical grants which go directly from the federal government to localities. One theory is that after a few years, new programs that demonstrate success should be wrapped into the formula-funded ongoing programs funded by federal formula money, while unsuccessful programs should be allowed to expire. In fact, however, the inertia of existing funding allocations established at the state level is a strong barrier to any re-allocation efforts. Less effective programs with existing funding streams and constituencies can preserve the status quo and prevent change.

Measuring Success

There are many challenges in evaluating the effectiveness of a program like Weed and Seed:

The Office of Justice Programs (OJP) had established both financial and programmatic monitoring requirements. Financial monitoring was performed by the OJP Office of the Comptroller, while program monitoring was the job of program managers. The grant issuance and program management function of Weed and Seed was initially assigned to OJP’s Bureau of Justice Assistance (BJA), but the program manager function was grafted onto the Executive Office of Weed and Seed policy office in the Clinton Administration.

Reviews by the DOJ Office of Inspector General and Congress’s General Accounting Office helped the program by providing for independent validation of its management.

A series of mandates forces programs to do more quantitative assessment: The Government Performance and Results Act (GPRA) and OMB’s Program Assessment and Rating Tool (PART) helped Congress and the Executive decide on the best way of

spending budget dollars, but there are costs to these approaches themselves. The success of assessment depends partly on the level of objectivity or fairness of the evaluators. Insofar as GPRA is implemented by the action office running the program, its objectivity is in question. From my experience in the two PART reviews of Weed and Seed that I dealt with, I would add say that OMB's implementation of its PART reviews raises questions about whether the managerial level of OMB had an agenda that affected final PART scores.

Quantification is often looked to for program assessment, and yet key factors may be hard to quantify. How do you measure the increase of hope in a community? Analysts often have to settle for surrogate measures, and measuring those has its own problems. In the case of Weed and Seed, the disparity in crime definitions and in the adequacy of data collection and reporting across local jurisdictions led Steve Rickman to ask sites to report the number of homicides in a Weed and Seed site as the key statistical indicator for the effectiveness of the program. The number of homicides is a statistic that is carefully kept by police agencies, and also reflects the effectiveness of a variety of other enforcement efforts to prevent and control violent crime. This provided hard numbers for each site, but with a limited relationship to the effectiveness of such a comprehensive strategy as Weed and Seed. Unfortunately, things not easily quantified tend to be undervalued. It is also essential to calibrate the appropriate level of effect that can reasonably be expected from a certain level of effort. Finally, phrases like "success" or "what works" can hide as much as they reveal. Specifying exactly what is aimed at and achieved is a key challenge of analysis. All of these limitations on reliance on statistical analysis point to the importance of qualitative assessment of comprehensive programs like Weed and Seed. National Process and Impact evaluations were conducted by independent social science organizations selected through competition by the National Institute of Justice. Both found the Weed and Seed program to be effective.

Evaluation Findings

Evaluations are most credible when they are conducted in a number of different sites, some of which are control sites, and when the evaluator is selected by the National Institute of Justice through a competitive process. The results of such evaluations of Weed and Seed showed it to be a promising approach.

National Process Evaluation

The evaluator selected on a competitive basis by the National Institute of Justice for the process evaluation of the Weed and Seed program was the Institute for Social Analysis, which teamed with the Police Foundation and the American Prosecutors Research Institute. The National Process Evaluation of the Weed and Seed Initiative, issued in October 1995, found, inter alia, that:

"Simply put, much of what we observed in the demonstration sites that was good would not have happened without the Weed and Seed Initiative. Groups of people who ordinarily do not talk to each other – such as prosecutors and

community residents, police officers and recreation directors – came together to solve problems, share resources, and coordinate their efforts. The reasons and capacity for getting together existed prior to Weed and Seed, but the motivations and vehicles for doing so resulted from the program’s implementation. Perhaps one of the lingering legacies of the Weed and Seed program will be ongoing coordination and collaboration among key groups, such as the federal and local law enforcement officials, federal and local prosecutors, social service and law enforcement agencies, municipal offices and private businesses, and community residents and all levels of government agencies. Since many of the key coordinators and leaders are permanent staff in these agencies, these powerful relationships may continue. Community policing and community prosecution efforts, if they adhere to their oft-spoken principles, have undeniable appeal and promise.” [Principal Investigator: Jan Roehl, PhD, Institute for Social Analysis, in the Final Report, Part I: Cross—site Summary, p. 88].

National Impact Evaluation

The evaluator selected on a competitive basis by the National Institute of Justice for the impact evaluation of the Weed and Seed program was Abt Associates, Inc. The National Impact Evaluation of the Weed and Seed Initiative, issued in June 1999, had similar findings.

As summarized by Terence Dunworth, PhD,

“...In my view, what this strategy has stimulated is a much greater self-help approach to the problem of distressed communities – this comes both from the Weed and Seed emphasis on broad-based community participation in Weed and Seed, and from the requirement that local progress flows from local involvement. Counter-intuitively perhaps, the lower level of funding seems to promote a more energetic local response.

“I find it particularly striking to compare EOWS [Executive Office for Weed and Seed] funding (at around \$40 million, plus or minus a few million) with other grant programs that address similar problems – e.g., the Byrne Formula Grant Program and the Local Law Enforcement Block Grant Program, each of which has been roughly ten times larger than Weed and Seed in recent years. I am not saying that those programs accomplished less than weed and Seed, but I do think Weed and Seed has had at least as great a stimulant effect on local organization and local acceptance of responsibility for community revitalization. And at a tenth of the cost. That is quite impressive” [*Weed and Seed Stimulus Factor*, Email Communication, October 12, 1999].

Creating a Sustainable Culture of Peace

BACKGROUND

International Association for Human Values (IAHV) is a 501(c)(3) nonprofit organization holding consultative status with Economic and Social Council of the United Nations (ECOSOC) since 2002. IAHV working in partnership with the Works of Wonder International, Inc. (WOW), 501(c)(3) not-for-profit educational organizations have launched a campaign to 'Create a Culture of Peace'. We are offering these programs to communities throughout the country at no cost to program participants.

Security often rises to the top of how one would define what is important to the quality of life of communities. Feeling safe and knowing our families and friends are also safe impacts the levels of stress we experience. It also impacts how we interact with those around us—are we acting from a place of fear and distrust and spreading that to others? Or, are we secure and joyful, with reverberating effects across our communities? One component of security is supporting those who have been victimized or those who have contributed to the crime perpetrated in communities. The challenges of observed cyclical patterns of violence are important to understand rather than to judge. What is at the root of the anxiety, fear, distrust, anger, and despair driving the stress-response that gives rise to crime and violence, is where we may best begin to address the public welfare and start to reduce cyclical patterns.

Recognizing that inner peace is the foundation for peace in the world, and that we must address and eliminate the ongoing cycles of violence and disharmony across many segments of society in order to achieve that peace, WOW's mission is to eliminate the cycles of violence in society by encouraging healthy and honest dialogue between and among members of communities and society, empowering youth to take responsibility for their communities, and encouraging all people to step into their innate peaceful identity, standing shoulder to shoulder, in a unified campaign for community, societal and world peace.

In order to meet the urgent need of reducing violence across communities in the US, IAHV and WOW will provide programs to reduce anxiety and stress across target communities in major cities in the US. Populations will include law enforcement, community leaders, business/religious/political leaders, incarcerated prisoners, and youth at risk for radicalization. IAHV's programs will also include training to foster the ongoing application of human values within the individual and across communities so as to foster that sense of connectedness, a mutual respect and honor for others and for the environment, and a spirit of service.

Our program will utilize the Sudarshan Kriya (SKY) breathing technique to reduce anxiety, stress, and other negative emotions which can trigger violent behavior. SKY is a controlled respiration technique taught in the workshops offered by IAHV and its effects have been studied in open and

randomized trials, both in health populations and populations with psychopathology. In a Prison Smart Street Lights, SKY was offered at Lancaster Challenger Memorial prison to incarcerated youth to provide anger management and rehabilitative training. The subjects were ages 13 to 18 and had been convicted of violent crimes with deadly weapons, murder, rape, armed robbery and terrorist threats against others. The results of this study showed a significant decrease in anxiety which subsequently led to decrease in anger, fear and reactive behavior. Furthermore, the number of minors in incident reports decreased significantly during the four---month period in which SKY was taught. It is important to note that these results were evident despite increased environmental stressors such as a change in director, low staffing ratios and an extensive change in prison staff, all of which are generally understood to increase anxiety levels and potentially impact security.

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