

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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