



Minnesota Advisory Committee to the United States Commission on Civil Rights

Civil Rights Implications of Policing (Revisited)

September 2022

**Minnesota Advisory Committee to the
U.S. Commission on Civil Rights**

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This work is the product of the Minnesota Advisory Committee to the United States Commission on Civil Rights. The report may rely on testimony, studies, and data generated from third parties. This report was reviewed by Commission staff only for legal sufficiency and procedural compliance with Commission policies. The views, findings, and recommendations expressed in this report are those of a majority of the Minnesota Advisory Committee and do not necessarily represent the views of the Commission, nor do they represent the policies of the United States Government.

*Mr. Kaster recused himself from portions of the report process due to a professional conflict

Letter of Transmittal

The Minnesota Advisory Committee to the U.S. Commission on Civil Rights submits this report detailing civil rights concerns associated with police practices in Minnesota. The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state of Minnesota. The contents of this report are primarily based on testimony the Committee heard during several virtual briefings conducted in 2021.

This report was adopted by a vote of nine (9) to one (1) at a committee meeting held on September 14, 2022. The dissenting member and those not present were provided an opportunity to prepare a dissenting statement. Two such statements are hereby appended into the report.

Based on the findings of this report, the Committee offers to the Commission recommendations for addressing this issue of national importance. The Committee recognizes that the Commission has previously issued important studies about policing practices nationwide and hopes that the information presented here aids the Commission in its continued work on this topic.

Velma Korbel

Chair, Minnesota Advisory Committee

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Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously...If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means would bring terrible retribution.¹

¹ Justice Louis Brandeis, *Olmstead v. United States*, 227 U.S. 438, 485, 48 S.Ct. 564, 575, 72 L.Ed. 944 (1928) (*dissenting opinion*). *Olmstead v. United States*, 227 U.S. 438, 485 (1928) (Brandeis, J., dissenting).



Minnesota Advisory Committee to the United States Commission on Civil Rights

Civil Rights and Policing in Minnesota (Revisited)

The nature and scope of the problem. There will be no end to disparate policing, and the accompanying resentment in the community, until sufficient data can be collected to better inform both policymakers and the People who elect them. Disparate policing is abusive on many levels, affecting the individuals involved, reopening unhealed wounds left by historical injustices, and reminding entire communities that their lives don't matter.

The Committee found that the lack of political will at all levels of government to enforce the limits on police conduct is the major impediment to meaningful change that would address the Constitutional violations identified in this report.

The most significant findings. The Minneapolis Police Department did not participate in this study, which was intended to discover which recommendations from the Committee's 2018 report, [*Civil Rights and Policing Practices in Minnesota*](#), were implemented and whether they sufficiently addressed biased policing.

Key Conclusions:

- The lack of political will at all levels of government to enforce the limits on police conduct is the major impediment to meaningful change
- Decisions about policing policy are value choices
- Aggressive police tactics, such as pretextual traffic stops, do little to deter or even decrease criminal behavior
- The current MPD discipline system has kept ninety percent of the sustained acts of misconduct by police officers out of the public eye

Key Recommendations:

1. Recommend to the President and the Congress that they address racial disparity in policing as the civil rights crisis that it is.
2. The Commission should conduct nationwide hearings on the topic of biased policing and the need for a central database to track it

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Context for this Report

When George Floyd was murdered by Minneapolis police officer Derek Chauvin in May 2020, a disturbing, albeit not unexpected pattern emerged in the weeks that followed. The People² protested, civil rights advocacy groups demanded change, law enforcement bristled against accusations of biased policing, community leaders called for reform, and policymakers addressed known policing problems with ineffective half-measures.

Protesting itself is not a call for change; it is only an effect or consequence of it. The call for change is in the People's minds and has been affected through generations of struggle, oppression, victimization, and bloodshed.³ Decades before Derek Chauvin pinned George Floyd to the ground and killed him, before the Nation responded with outrage and chain-reacted to millions of people worldwide in condemnation of police violence,⁴ the call for change was already in the air.⁵

It was against this backdrop that the Minnesota Advisory Committee to the United States Commission on Civil Rights chose to revisit their 2018 report, *Civil Rights and Policing Practices in Minnesota*.⁶ This report culminated with the finding of disparate policing of People of Color in Minnesota. The committee made numerous recommendations,⁷ including the need for comprehensive use-of-force training and training in de-escalation techniques. Were any of the recommendations the Committee made followed, and if not, why not?

The intention of this study initially aimed to discover which policies meant to control police behavior are failing, and which contribute to the racial disparity in policing. Unfortunately, **law enforcement did not respond to numerous requests to appear before the Committee to answer questions.**⁸

² The MN Advisory Committee uses the term “the People” to denote the public at large.

³ See Meilan Solly, *158 Resources to Understand Racism in America*, Smithsonian Magazine Special Report, <https://www.smithsonianmag.com/history/158-resources-understanding-systemic-racism-america-180975029/>

⁴ See Tyler Reny and Benjamin Newman, *The Opinion-Mobilizing Effect of Social Protest against Police Violence: Evidence from the 2020 George Floyd Protests*, 115:4, American Political Science Review, 1499-1507 (2021).

⁵ See Library of Congress, *The Civil Rights Act of 1964: A Long Struggle for Freedom*, <https://www.loc.gov/exhibits/civil-rights-act/civil-rights-era.html>. (2022)

⁶ Minn. State Advisory Comm., *Civil Rights and Policing Practices in Minn.*, <https://www.usccr.gov/files/pubs/2018/03-22-MN-Civil-Rights.pdf> (2018).

⁷ See Appendix D

⁸ See Appendix A

This Committee, however, proceeds with its mandate to inform the U.S. Commission on Civil Rights of matters related to discrimination or a denial of equal protection of the laws under the Constitution⁹ by reporting on the public policy concerns in an administration of justice that has repeatedly denied equal protection of the laws to the People of Minnesota.

Policy Context

The Minnesota Advisory Committee (Committee), through this report and letter of transmittal, notifies the United States Commission on Civil Rights (Commission) that people of this state, in particular People of Color in the Minneapolis – St. Paul area, have been subjected to racially biased policing that includes:

- (1) Willful deprivation, **under color of law**¹⁰, of fundamental rights under the U.S. Constitution including,
 - a. The right to equal protection of the laws¹¹;
 - b. The right not to be deprived of liberty without due process of law¹²;
 - c. The right to be free from a police officer’s deliberate indifference to serious medical needs¹³;
 - d. The right to be free from an officer’s deliberate unreasonable force¹⁴;
 - e. The right to be free from unreasonable searches and seizures¹⁵.
- (2) In many cases, the violations **under color of law** have led to bodily injury and death.

The provisions of the Constitution of the United States, as amended, constrain and limit police action to protect the rights of everyone, including those who are suspected of committing a crime. The testimony and data laid out in this report will show that while these fundamental rights are violated by individual police officers engaging in biased treatment of people of color, it is the institutional *policies, cultural processes, and lack of accountability* that perpetuate the Constitutional violations and disparities in policing.

⁹ 45 C.F.R. § 1975a(d).

¹⁰ 18 U.S.C. § 242, also See 42 U.S.C. §1983.

¹¹ U.S. Const. amend. XIV.

¹² *Id.*

¹³ See U.S. Const. amend. VIII.

¹⁴ See *Graham v. Connor*, 490 US 386 (1989) (holding claims of excessive force by law enforcement are properly analyzed under the Fourth Amendment’s “objective reasonableness” standard).

¹⁵ U.S. Const. amend. IV.

This Committee is charged with, among other duties, advising the Commission on “the effect of the laws and policies of the Federal government with respect to equal protection of the laws.”¹⁶

The Committee finds there are substantial and comprehensive protections under current federal civil rights laws. Indeed, there are state laws, municipal laws, and law enforcement policies, procedures, and regulations that prohibit all the misconduct identified in this report.

The Committee will show that the lack of political will at all levels of government to enforce the limits on police conduct is the major impediment to meaningful change that would address the Constitutional violations identified in this report.

Protection of civil rights demands close examination of the exercise of police authority...The price for police protection must not be the relinquishment of civil rights.

U.S. Commission on Civil Rights, *Who is Guarding the Guardians?* 1981

Acknowledgement

The Committee recognizes the prior work conducted by the United States Commission on Civil Rights which addressed the issue of police misconduct, among others, in their 1981 report, *Who is Guarding the Guardians?*¹⁷ That report precipitated the federal Violent Crime Control and Law Enforcement Act of 1994,¹⁸ of which Title XXI of that Act has been directly attributed to the Commission’s report.¹⁹

The Commission on Civil Rights, in fact, has issued twenty reports on the topic of the administration of justice since 1980.²⁰ The Advisory Committees to the Commission have issued

¹⁶ Charter for the U.S. Comm’n. On Civil Rights State Advisory Comm. § 4(2).

¹⁷ U.S. Comm. On Civil Rights, *Who is Guarding the Guardians?* (1981).

¹⁸ *The Violent Crime Control and Law Enforcement Act of 1994*; Pub. L. No. 103-322, 108 Stat. 1796 (1994).

¹⁹ U.S. Dep’t. of Justice, *Taking Stock: Report from the 2010 Roundtable on the State and Local Law Enforcement Police Pattern of Practice Program* (42 U.S.C. § 14141), p.1, (2011).

²⁰ See [USCCR](#), *Police Community Relations in San Jose*, (1980); *Who is Guarding the Guardians* (1981); *Allegations of Police Misconduct in the Context of non-violent Public Demonstrations* (1989); *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination*, (1995-1999); **Volumes I – IV**, *Police Practices and Civil Rights in New York City* (2000); *Revisiting Who’s Guarding the Guardians* (2000); *Police Use of Force* (2018).

at least thirty-three statements and reports on the topic during the same period.²¹ Clearly, attention has remained focused on the pervasive problem of police violence.

The policy questions addressed in this report arise from the overlapping and competing claims of:

1. A lack of transparency and poor communication from the MPD,
2. Training standards that are unresponsive to the challenges officers face daily,
3. A union that shields officers from accountability and discipline,
4. Policing tactics and priorities that promote negative contact between police and minorities.

These questions, modified from the committee's initial proposed study due to non-participation from law enforcement, are informed by empirical peer-reviewed studies, testimony from experts, and anecdotal evidence collected by social science researchers.

²¹ See State Advisory Committee reports: <https://www.usccr.gov/reports/advisory-committees-reports>.

I. Racial Disparities in Policing

*I read the report of the... riots ...and it is as if I were reading the report of the investigating committee from the previous years. I must again say in candor to you members of the Commission, it is kind of like Alice in Wonderland with the same moving picture reshown over and over again, the same analysis, the same recommendations, and the same **inaction**.*²²

You will be forgiven if you think the above quote comes from a pundit discussing the protests and aftermath of George Floyd's killing. In fact, that comment was made by Dr. Kenneth B. Clark in 1968 to the National Advisory Committee on Civil Disorders. The Commission was formed by President Lyndon Johnson in response to the riots in Detroit, Los Angeles, Tampa, New York, and elsewhere the previous year. Dr. Clark referenced reports about the 1919 riot in Chicago, the 1935 and 1943 riots in Harlem, and the 1967 report on the Watts riot.²³

Fifty-four years later, the country is plagued with the same inaction. The intervening decades have seen too many instances of civil unrest following the killing of civilians by police, followed by dozens of studies and ultimate inaction. Twenty-two years after the United States Commission on Civil Rights published its report, *Revisiting Who is Guarding the Guardians*, an "honest and sufficient addressing of police misconduct" remains elusive.²⁴

Reasonable and well-intentioned people can, and will, disagree as to which government interests are so compelling that they warrant infringements on an individual's rights. There are certain infringements, however, prohibited by the Constitution that are not debatable: there are limits on police conduct. Power with impunity is the power to abuse and our social contract²⁵ calls for the

²² National Advisory Comm'n on Civil Disorders, [*The Report on the National Advisory Commission on Civil Disorders*](#), p.265 (1968).

²³ Ibid.

²⁴ U.S. Comm. On Civil Rights, *Revisiting Who is Guarding the Guardians*, p.4 (2000). "Reports of abuse and misconduct seem to be incessant, and they typically prompt a complex series of responses: community leaders cry out for change; law enforcement agencies assert that they are doing their job; federal investigators evaluate rogue police officers and entire departments; politicians' debate about policies that purport to be tough on crime, yet strong on civil rights. What emerges from these opposing accounts is **the need for a reasoned, systematic approach to honestly and sufficiently address police misconduct, once and for all.**"

²⁵ See John-Jacques Rousseau, *The Social Contract*, (1762); Thomas Hobbes, *Leviathan*, (1651); and John Locke, *Second Treatise of Government*, (1689). These works were referenced by Thomas Jefferson and James Madison in drafting the founding documents of this country.

rule of law, not rule by police. When an officer exceeds the scope of legal authority, the public expects civil or criminal liability. In all cases, law enforcement must be made to respond to justifiable concerns.

The U.S. Commission on Civil Rights found, in their 2018 report on *Police use of Force*, “the negative effects of uneven policing practices against particular communities (e.g., racial and ethnic, LGBT, immigrant, disability) are well documented in the social science literature.”²⁶

Additionally, a concurrent investigation to the Committee’s current study into this topic was conducted by the Minnesota Department of Human Rights, which by statute has far more access to city and police data than this Committee. Additionally, their focus was on violations of the Minnesota Human Rights Act,²⁷ and their study did not examine federal protections. The Department, “after completing a comprehensive investigation...finds there is probable cause that the City and MPD engage in a pattern or practice of race discrimination²⁸ in violation of the Minnesota Human Rights Act.”²⁹ (See Table 1 on p. 14).

The Department’s investigation reviewed,

700 hours of body-worn camera footage and nearly 480,000 pages of City and MPD documents, such as training materials, policies and procedures, officer’s disciplinary records, policy development manuals, reports and assessments, public messaging documents, observed 87 hours of the 2021 MPD Academy training for new officers, and analyzed MPD’s data on all recorded use of force incidents across MPD’s five precincts from 2010 to 2020. The Department also analyzed MPD’s and the City’s data³⁰ from 2017 to 2020 on traffic stops, searches, citations, arrests, and prosecutions stemming from those stops.³¹

²⁶ See U.S. Comm. On Civil Rights, *Police Use of Force: An Examination of Modern Policing Practices*, p.7 (2018), particularly footnote 12 for a listing of studies.

²⁷ Minn. Stat. § 363A.12 subd. 1 (prohibiting discrimination in public services).

²⁸ *Int’l Brotherhood of Teamsters v. United States*, 431 U.S. 324, 336 (1977). (A pattern of discrimination is present where the denial of rights consists of something more than isolated, sporadic incidents, but is repeated, routine, or of a generalized nature. Such a showing may be made through statistical evidence and/or other examples of specific instances of discrimination.)

²⁹ Minn. Dep’t. of Human Rights, *Investigation into the City of Minneapolis, and the Minneapolis Police Department: Findings from the Minnesota Department of Human Rights*, p.5 (2022).

³⁰ Data analysis was conducted by Greg Ridgeway, Professor of Criminology, Statistics, and Data Science at the University of Pennsylvania. Prof. Ridgeway has conducted similar studies for police departments in Cincinnati, New York, Maricopa County (Phoenix), Chicago, Philadelphia, and Baltimore; he has conducted analysis for the U.S. Dep’t. of Justice Civil Rights Division, and the Illinois Attorney General’s office.

³¹ *Supra*. Note 28 at 7.

Furthermore, in reaching the finding of probable cause of engaging in a pattern and practice of race discrimination, the Department received assistance from nationally recognized policing experts³² in reviewing MPD's use of force files and alleged misconduct files. The review of the evidence "aligns with law, policy, and where appropriate, commonly accepted policing practices."

The Minnesota Advisory Committee sees no reason to reestablish what is already patently clear, as Dr. Ebony Ruhland, former research director at the Robina Institute at the University of Minnesota Law School, told the Committee. "We need to move beyond that question [do racial disparities exist?] ...now we need to understand why they exist and how to reduce them."³³

The Committee considers the raw data reviewed in the following sections, the review of the literature, combined with the analysis conducted in the Minnesota DHR report are sufficient to conclude that the effect of the current policing policies in the State lead to discriminatory policing.

Findings of Discrimination

The Minnesota Department of Human Rights finds there is probable cause that the City and MPD engage in a pattern or practice of race discrimination in violation of the Minnesota Human Rights Act.

Specifically, the Minnesota Department of Human Rights finds that MPD engages in a pattern or practice of discriminatory, race-based policing as evidenced by:

- Racial disparities in how MPD officers use force, stop, search, arrest, and cite people of color, particularly Black individuals, compared to white individuals in similar circumstances.
- MPD officers' use of covert social media to surveil Black individuals and Black organizations, unrelated to criminal activity.
- MPD officers' consistent use of racist, misogynistic, and disrespectful language.

The pattern or practice of discriminatory, race-based policing is caused primarily by an organizational culture where:

- MPD officers, supervisors, and field training officers receive deficient training, which emphasizes a paramilitary approach to policing that results in officers unnecessarily escalating encounters or using inappropriate levels of force.
- Accountability systems are insufficient and ineffective at holding officers accountable for misconduct.
- Former and current City and MPD leaders have not collectively acted with the urgency, coordination, and intentionality necessary to address racial disparities in policing to improve public safety and increase community trust.

Without fundamental organizational culture changes, reforming MPD's policies, procedures, and trainings will be meaningless.

Figure 1. Findings of Discrimination by the Minnesota Department of Human Rights

³² 21CP Solutions is an organization that is comprised of policing experts such as police chiefs, lawyers, and social scientists who have significant experience working on major assessments, monitoring, and oversight projects related to public safety. <https://www.21cpsolutions.com/>

³³ Ebony Ruhland, testimony, *Briefing Before the Minn. Advisory Committee to the United States Commission on Civil Rights*, April 29, 2021, transcript, p.13 (hereafter cited as April 29th Briefing).

A. Data

There will be no end to disparate policing, and the accompanying resentment in the community, until sufficient data can be collected to better inform both policy makers and the People who elect them. Disparate policing is abusive on many levels, affecting the individuals involved, reopening unhealed wounds left by historical injustices,³⁴ and by reminding whole communities that their lives don't matter.

The history of disparate policing is well documented in the social science literature, and law enforcement hierarchy acknowledges the current disparity in Minnesota.³⁵ In 2017, then-Chief of the Minneapolis Police Department Janee Harteau told the Committee that the important question about disparate police treatment was not its existence, but “why?”³⁶ it exists. She said, “the only way we could really understand the *why* is if we started to track the numbers.”³⁷ A good observation 100 years in the making.

Studies continually identify the limitations on research by the lack of nationwide data.³⁸ Professor Fryer indicates in his study that nationwide, submissions of use-of-force data are voluntary, and the coding is inconsistent from department to department; therefore, “[the] primary obstacle to the study of police use of force has been the lack of readily available data.”³⁹ The Committee will show in the following sections that disparate policing practices exist in the state of Minnesota.

While the merit of a national database is beyond the scope of this inquiry and frankly, is better left for the U.S. Commission on Civil Rights to consider, the reticence of law enforcement to participate in any sort of examination into their secret world is alarming. A case in point is this very report, **which received no input from law enforcement**. The study of bias in policing is an empirical question, and the answers for the long-standing problems associated with disparate policing must be informed by science.

³⁴ Roland Fryer, Jr., *An Empirical Analysis of Racial Differences in Police Use of Force*, National Bureau of Economic Research, (2016). <http://www.nber.org/papers/w22399>

³⁵ See Harteau, 2017 Briefing; Frye, 2021 Briefing; Cerra, 2021 Briefing;

³⁶ Harteau, Testimony, p.200.

³⁷ Ibid.

³⁸ See Rushin, *Police Disciplinary Appeals*, 167 U. Pa. L. Rev. 545 (2019); David Klinger, et.al, *Race, Crime, and the Micro-Ecology of Deadly Force*, 15:1, American Society of Criminology – Criminology & Public Policy, 193-194 (2015)

³⁹ Fryer, *supra* note 33, at 1.

1. Traffic Stops

A simple traffic stop, something many people see as merely an inconvenience, can become unnerving to People of Color because interactions with the police are unpredictable, and often escalate quickly through misunderstandings and biased fear.⁴⁰ The humiliation and indignation that goes along with wrongful detention by the police cannot fully be appreciated by most people. It can be understood only by those that have been subjected to rude and belligerent behavior by an agent of the state, in a situation where your obedience is mandatory, and attempting to retain your dignity could cost you your life.

Many traffic stops are pretextual stops that identify minor infractions to detain people in hopes of finding contraband like weapons or drugs.⁴¹ This style of policing is called “proactive policing.”⁴² One of the complaints against this aggressive tactic takes issue with the selective application in neighborhoods that are predominantly Black and Brown neighborhoods.⁴³ Research, including a study conducted by the Robina Institute at the University of Minnesota Law School, indicate this method of policing does little to deter or even decrease criminal behavior.⁴⁴

⁴⁰ Sharon LaFraniere and Mitch Smith, *Philando Castile Was Pulled Over 49 times in 13 Years, Often for Minor Infractions*, The New York Times, July 16, 2016, <https://www.nytimes.com/2016/07/17/us/before-philando-castiles-fatal-encounter-a-costly-trail-of-minor-traffic-stops.html> (2022).

⁴¹ Ruhland, April 29th Briefing, p.10.

⁴² *Proactive Policing: Effects on Crime and Communities*, Committee on Proactive Policing, The National Academies of Sciences, Engineering, and Medicine, The National Academies Press (2018), <https://nap.nationalacademies.org/read/24928/chapter/1>

⁴³ Ibid. at 11.

⁴⁴ Ibid.

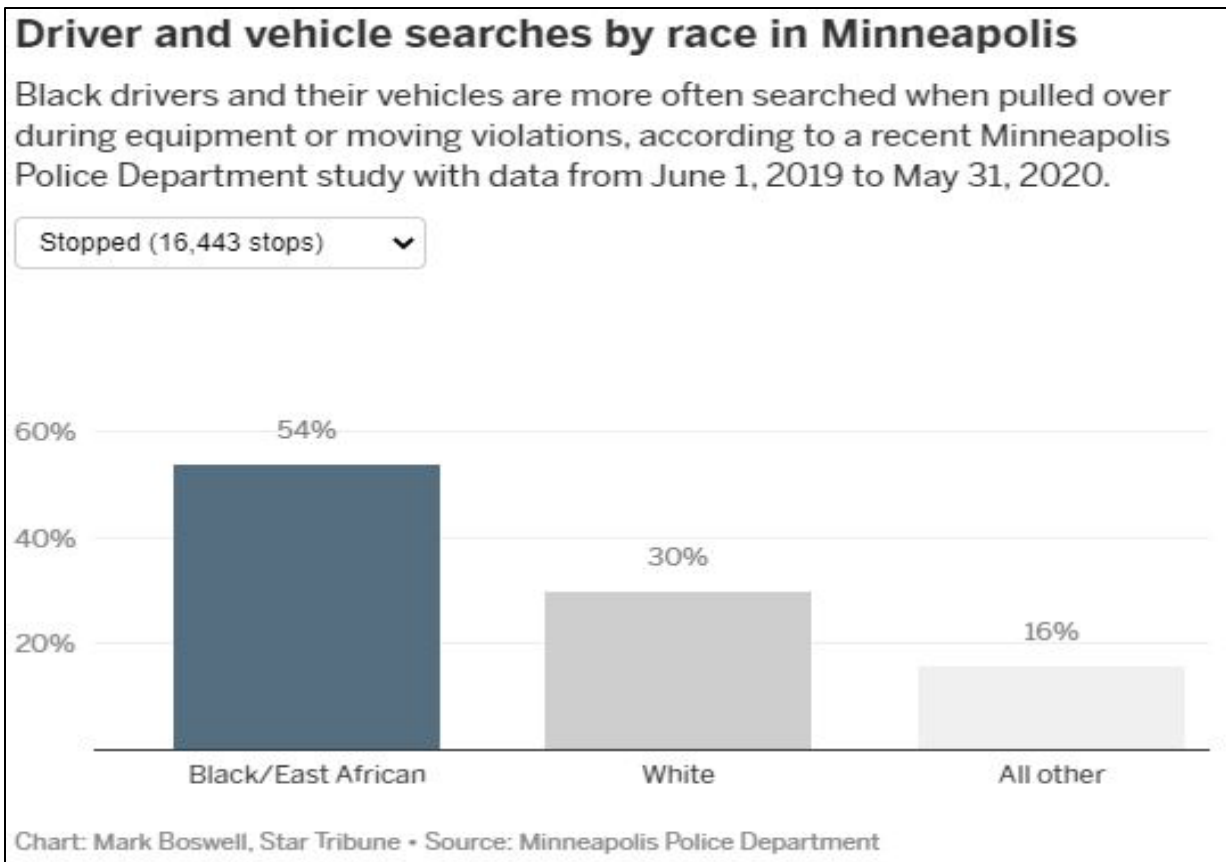


Figure 2. Minneapolis Drivers Stopped by Race.

By way of statistical representation of the policing disparity, African Americans make up nineteen percent of the population in Minneapolis but accounted for fifty-four percent of the 16,443 traffic stops made during the 2019-2020 period.

2. Searches

Of the 16,443 traffic stops made by Minneapolis police during 2019-2020, seventy-eight percent of vehicles that were searched during the stop involved Black motorists while only twelve percent of searches involved white drivers.

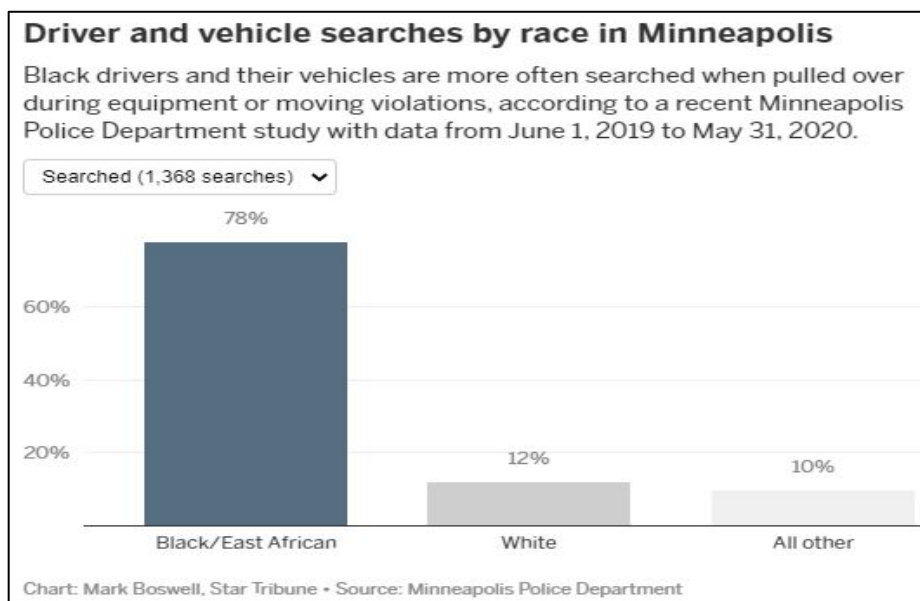


Figure 3. Minneapolis Drivers Vehicles Searched by Race

Of the arrests resulting from contraband found during these searches, forty-one percent were white and only twenty-six percent were Black. This suggests a staggering abuse of officer “probable cause,” a lack of training, and a callous disregard of the negative effects of such stops. Absent a knowledge of the policy and strategy behind these stops, the Committee doubts the social benefits outweigh the social costs that result in no recovery of contraband.

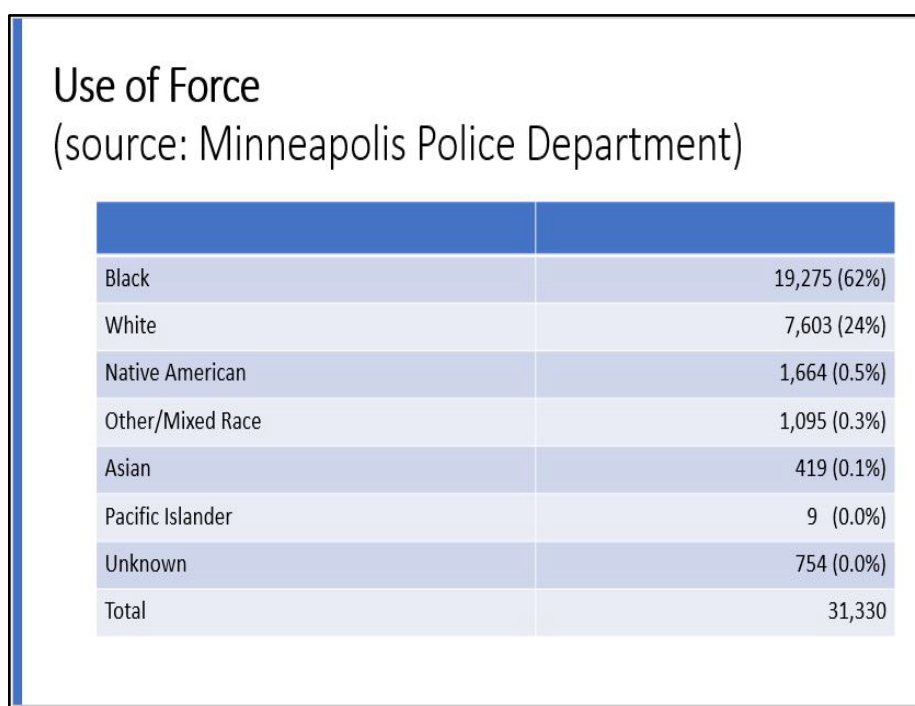
Aside from the negative impact on community relations, such searches likely skirt the edge of fourth amendment legality.⁴⁵ There is a reason why protections under the Constitution contain a provision about searches. A search is an intrusion by the state. Even when the search is legal, it constitutes a significant intrusion on individual liberty, autonomy, and privacy.

⁴⁵ *Floyd v. City of N.Y.*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (finding the city’s policy of racial profiling defined groups for stop and frisks violated the plaintiffs’ Fourth and Fourteenth Amendment rights).

3. Use of Force

Invited by the Committee to participate in this study, noted Harvard University economist Roland Fryer, Jr. submitted his report on policing use of force in lieu of testimony.⁴⁶ His research found a correlation between police use of force and minority status; however, the lack of nationwide data prevented conclusions about the causes of the findings.⁴⁷

The statistics for Minneapolis mirror Dr. Fryer's findings. For the period between January 2008 and May 2020, sixty-two percent of all use-of-force was against Black people.



Black	19,275 (62%)
White	7,603 (24%)
Native American	1,664 (0.5%)
Other/Mixed Race	1,095 (0.3%)
Asian	419 (0.1%)
Pacific Islander	9 (0.0%)
Unknown	754 (0.0%)
Total	31,330

Figure 4. Minneapolis PD Use of Force by Race 2008-2021

In their concurrent investigation, the Minnesota Department of Human Rights found that “between January 1, 2010, and December 31, 2020, sixty-three percent of all use of force incidents that MPD officers recorded were against Black individuals.”⁴⁸ The Minnesota Advisory Committee can deduce, through the consistent disproportionality over time, that at a minimum, the policies of the

⁴⁶ Roland Fryer, Jr., *An Empirical Analysis of Racial Differences in Police Use of Force*, National Bureau of Economic Research, (2016). <http://www.nber.org/papers/w22399>

⁴⁷ Ibid. at 3.

⁴⁸ Minn. Dep’t of Human Rights, *supra* note 29, at 11.

Minneapolis Police Department produce disparate policing practices negatively impacting People of Color. The Committee feels the weight of the statistics are dispositive but cannot account for factors other than race.

Using data and statistical methods not available to the Committee, the Minnesota Department of Human Rights compared their data “against Black and White individuals in similar circumstances”⁴⁹ to reach their similar conclusion.

B. Analysis

The data presented to the Committee comes from experts in their respective fields. Sourced from the same data sets used by similar investigations, the disparities over time are irrefutable. More convincing is that the data come from the entire Minneapolis Police Department across all precincts, which removes the possibility of rogue cop or hot spot explanations. The Committee did not have the opportunity to question the Minneapolis Police Department about the disparities, but since the findings come from their own data, one can only assume they are aware of its continued existence. Simple deductive reasoning leads us to conclude that if leadership at MPD and the City know about the disparities and have allowed them to continue for over a decade, the strategies involved are the policy of the department.

Bias is a natural occurrence that must be accounted for, whether it be racial, cultural, or institutional. The fact that disparate policing practices are happening department wide, begs the question: Should the focus be on reforming individual officers or reforming the institution as a whole?

C. Findings

In Minneapolis, people of color are overwhelmingly overrepresented in traffic stops, vehicle searches, vehicle searches that yield no contraband, and are much more likely to incur the use of force when engaging with police. The police force in Minneapolis has been working to improve police/public relations for decades. Data show that their style of policing is not only ineffective at fighting or preventing crime, but the disparity in its application is also fueling the alienation with

⁴⁹ Ibid. at 12.

the BIPOC⁵⁰ community. Agencies must consider ways to reduce these racially biased strategies without jeopardizing public safety.

The fact remains that police actions – the murder of George Floyd – triggered the riots of 2020. The reality of MPD’s inability to control the situation reveals the price of having a police department supported solely by the power of the law, but not by the consent or support of those being policed.

II. The Barriers to Effective Change

Any introductory class in political science will undoubtedly describe the instruments of the state as merely reflections of the political and economic ideology of the dominant group.⁵¹ Although the focus of this report is on policing, many of the circumstances are structural issues beyond individual control, by either the police or those being policed.

In 1990, the United Nations sponsored a study to inventory crime prevention programs in Europe and North America.⁵² Despite differences in culture, politics, and intellectual traditions, there were similarities reported in the “central determinants of the dispositions of individuals towards offending.”⁵³ The study also identified several social policy areas most frequently cited as having a bearing on crime: (1) Education Policy, (2) Employment, (3) Family, (4) Youth Policy, and (5) Health Policy.⁵⁴

Our reference to the United Nations study is meant to state generally that there are various interrelated factors that play into what motivates and sustains criminal behavior. The proper accounting of all of these forces in Minneapolis, much less Minnesota, are beyond the scope of this report. They do highlight, however, that the only realistic program for change is one which is based upon an intelligent analysis of all the problems of the group (in this case BIPOC) in terms of the broad social forces which determine conditions and opportunities.

⁵⁰ Black, Indigenous, and People of Color

⁵¹ See Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (1921).

⁵² United Nations European Institute for Crime Prevention and Control, *Crime Prevention Strategies in Europe and North America*, (1990) <https://www.ojp.gov/pdffiles1/Photocopy/127134NCJRS.pdf>.

⁵³ Ibid. at 18.

⁵⁴ Ibid. at 19.

The following sections will show there is a lack of political will at all levels of government to properly address the legacy of unequal treatment of BIPOC people as a whole. As a result, that same political will hesitates to enforce limits on police conduct.⁵⁵ Police are utilized to cure or at least respond to all the social ills of society.⁵⁶ The enterprise of law enforcement is misdirected because they are tasked with unmanageable burdens and an unclear mission.

A. Policies

Minnesota law enforcement agencies did not respond to invitations to participate in this study.

The Committee was unable to independently ascertain whether the recommendations made in 2018 were applied.⁵⁷ Minneapolis Council Member Steve Fletcher appeared before the Committee in May 2021, saying he was informed with the circumstances that contributed to the Committee's 2018 report.⁵⁸ Councilman Fletcher felt the events of 2020 gave cause to return to the recommendations from that report.⁵⁹ Citing the "systemic shortcomings in dramatic and tragic ways,"⁶⁰ his answer to whether the civil rights impact of policing on Minnesotans has improved was "...no, we have failed."⁶¹

Councilman Fletcher revisited the Committee's 2018 report and praised the "unflinching presentation of multiple viewpoints [which] serves to inform and simultaneously re-traumatize a Minneapolis reader."⁶² (referring to MPD Lt. Bob Kroll's reprehensible dismissive retelling of Eric Garner's killing). Fletcher told the Committee that despite "giving voice to a perspective that minimizes civil rights harms" (in 2017), the Department has recently taken steps to invest in training for select officers on interview techniques for victims of trauma.⁶³

Despite that positive step forward, Councilman Fletcher told the Committee the Minneapolis Police Department "has continued to demonstrate a real lack of self-awareness about the ways their own behavior has been traumatizing and stirs escalating tensions...the failure to thoughtfully

⁵⁵ See Abigail Cerra, Ebony Ruhland, Stephen Rushin, testimony, April 29th Briefing.

⁵⁶ Ibid.

⁵⁷ Potential Committee questions left unanswered can be found in Appendix A.

⁵⁸ Fletcher, testimony, May 27 Briefing, 28.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid. at 27.

⁶³ Ibid. at 28.

account for trauma and mistrust continues to set back any meaningful community engagement efforts.”⁶⁴ He cited a “survey conducted by the city’s officer of performance and innovation [that] found eighty-four percent of respondents are not comfortable with a police response in a mental health crisis, fifty-seven percent are not comfortable with 911 as a reporting option, and forty-three percent said they did not call 911 at all during an emergency.”⁶⁵ He said it was troubling to learn that people are worried enough about police escalating the situation that they avoid calling the city for help.⁶⁶

The context of a policy discussion on policing is that decisions about policing are value choices, often made to favor police power over individual rights. They cannot be discussed in isolation because public safety and officer safety are often competing priorities. To further the point, in a 2021 briefing before the Minnesota Advisory Committee, nationally known author and Manhattan Institute fellow Heather MacDonald told the Committee policing is a political act.⁶⁷ The decision, she said, between “very proactive policing and very passive reactive policing is a political judgement.”⁶⁸

Patrol officers play a vital role as initial-decision makers in the criminal justice process and the decisions they make can have an impact on lives, on families, and on entire communities. Officers have wide discretion in the way they interact with the public, often relying on *suspicion* to justify a traffic stop or detaining an individual.

Officers are isolated because of the nature of their work. For the most part, they only meet with those being policed rather than the ones they are serving. The nature of their work means they tend to be suspicious of everything and everyone. It is the responsibility of the City Government and the Chief of Police to create and enforce appropriate policies to prevent misuse of discretion that leads to violations of Constitutional protections.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ MacDonald, testimony, May 27 Briefing, p.43

⁶⁸ Ibid.

*It is a crime for one or more persons acting under color of law willfully to deprive or conspire to deprive another person of any right protected by the Constitution or laws of the United States.*⁶⁹

1. Enforcement Policy

Minnesota law enforcement agencies did not respond to invitations to participate in this study.

The general duties of a Minneapolis police officer are found in the [Minneapolis city charter](#)⁷⁰.

The duties listed are vague considering the instruction to “patrol the city where violations of the law are likely to occur.”⁷¹

The Minneapolis Police Department Policy and Procedure Manual⁷² is written broadly and touches on all aspects of policing. The manual is available to the public as an online document. While it is easily accessible, the 634-page document has no table of contents and is not paginated front to back, leaving a burdensome task for the civilian reader to find answers to questions. The Committee is not qualified to judge whether the MPD manual is sufficient for its purpose, but there are a few striking examples of concern.

Notably, the manual uses “probable cause” over sixty times in various context but does not actually define the term in a useful manner. The code of conduct states “all investigative detentions, pedestrian and vehicle stops, arrests, searches and seizures of property by officers *will be based on a standard of reasonable suspicion or probable cause* in accordance with the fourth Amendment of the U.S. Constitution and statutory authority.”⁷³ The manual dedicates twenty-two pages to personal appearance and uniforms⁷⁴ but does not elaborate on what constitutes reasonable suspicion or probable cause, nor does it provide examples to illustrate the point. This is significant because probable cause is one of the standards, or thresholds, that must be met for an officer to detain someone or to conduct a non-consensual search of a vehicle.⁷⁵

⁶⁹ 18 U.S.C. § 241 (2022).

⁷⁰ Minneapolis, Minn., Charter Title 9 § 171.30.

⁷¹ *Id.*

⁷² The Minneapolis Police Department, *Policy and Procedure Manual*, (2022) <https://www.minneapolismn.gov/media/-www-content-assets/documents/MPD-Policy-and-Procedure-Manual.pdf>.

⁷³ *Ibid.* at 228.

⁷⁴ *Ibid.* at 69.

⁷⁵ *Ibid.* at 540.

These traffic stops and searches are part of the institutional policies and practices that lead to the racial disparities in enforcement and contribute to community unrest. Research has shown that these stops are pretextual and are only used in certain neighborhoods. They do little to decrease or deter criminal behavior and take resources away from other activities.⁷⁶ Re-writing the policy manual to clarify officer discretion will reduce the opportunities for officer bias and will strengthen the city's position in disciplinary proceedings.

You can't go outside on the street or take your kids to the park without being harassed by the police, and when there's a serious crime they won't show up.
Darnell, a black man in his mid-twenties, as told to University of Minnesota Researchers

Researchers reported to the Committee that people of color feel “over-policed and under-protected.”⁷⁷ Dr. Phelps told the Committee, “the young men in our study said that when they were driving, particularly if they were driving in groups, that they were frequently stopped and disrespected and placed at risk of violence by police officers.”⁷⁸

This finding by Dr. Phelps corroborates the data from the Minneapolis Police Department on the racially disparate stops, and also sheds light on the Philando Castile incident. By the time Mr. Castile was killed by the St. Anthony Police Department, an outlying community of Minneapolis, in 2016, he had been pulled over by the police on forty-nine separate occasions.⁷⁹ Each stop raising the statistical probability of an officer-involved shooting.

2. Training Policy

Minnesota law enforcement agencies did not respond to invitations to participate in this study.

Minnesota continues to wrestle with race relations and for the most part, many officers, as most people, lack the nuanced understanding of this complex and enduring social dynamic. After a few months removed from life as a civilian, many officers, with no understanding whatsoever of the

⁷⁶ Ruhland, testimony, April 29 Briefing.

⁷⁷ See Phelps and Ruhland, testimony, April 29 Briefing.

⁷⁸ Phelps, testimony, April 29 Briefing, p.5.

⁷⁹ Sharon LaFraniere and Mitch Smith, *Philando Castile Was Pulled Over 49 times in 13 Years, Often for Minor Infractions*, The New York Times, July 16, 2016, <https://www.nytimes.com/2016/07/17/us/before-philando-castile-fatal-encounter-a-costly-trail-of-minor-traffic-stops.html> (2022).

perspectives or experiences of people of color are tasked to patrol communities of color and have virtually no ability to engage critically on the topic of race.

Many officers simply fail to understand the effects of their actions. This was noted by the Kerner Commission in 1968 and still holds true today, “Calling a man by his first name may arouse resentment because many whites refuse to extend the courtesy of the title ‘Mister’ or ‘sir’. A patrolman taking the arm of a person he is leading to a police car not understanding this may trigger a fight or flight response or the need to resist to avoid degradation in the eyes of friends or onlookers.”⁸⁰

Three high profile incidents of police-involved deaths brought intense scrutiny to the Minnesota law enforcement community. The killings of [Jamar Clark](#) (2015), [Philando Castile](#) (2016), and [Justine Damond Ruszczyk](#) (2017), sparked protests in the state and prompted the Minnesota legislature to, among other actions, address officer training. As a result, in February 2020, three months before George Floyd’s death, Minnesota Attorney General Keith Ellison and Commissioner of Public Safety John Harrington released [recommendations](#) and action steps to reduce police violence in Minnesota. One notable recommendation to Minnesota Law Enforcement agencies was:

- Train all law-enforcement agencies in de-escalation skills and tactics to reduce use of force, especially when responding to people in crisis.⁸¹

In 2017 the Minnesota Advisory Committee heard from social scientists about the need for training. For this policy report, the Committee invited Dr. Eugene Borgida,⁸² Professor of Psychology and Law at the University of Minnesota, and Dr. James Densley,⁸³ Professor and Department Chair of the Metro State University School of Law Enforcement and Criminal Justice, to update their testimony from 2017.

⁸⁰ Supra note 22 at 159.

⁸¹ Recommendations and Action Steps, *Working Group on Police-Involved Deadly Force Encounters*, p. 7 (2020), <https://dps.mn.gov/divisions/co/working-group/Documents/police-involved-deadly-force-encounters-recommendations.pdf>.

⁸² Dr. Borgida is an elected Fellow of the American Association for the Advancement of Science. His research has been funded by the National Science Foundation, National Institute for Health, National Institute of Mental Health, and the Pew Charitable Trusts.

⁸³ Dr. Densley holds a Doctor of Philosophy in Sociology from the University of Oxford, Saint Antony’s College. He has received global media attention for his work on policing, violence, and criminal networks.

Both professors testified about recent studies that describe implicit bias training, as a standalone component to police officer training, as not effective at combating implicit bias over time.⁸⁴ Dr. Borgida referenced a recent meta-analysis of 260 independent studies (28,556 participants) over forty years of research that found “the positive effects of diversity training were greater when training was complemented by other diversity initiatives, targeted to both awareness and skills development, and conducted over a significant period of time.”⁸⁵

Researchers found that diversity training programs are less effective at changing attitudes which are “strong...particularly emotion-laden...tightly tied to self-identity...and are generally resistant to change.”⁸⁶ The effects of diversity training “on reactions and attitudinal/affective learning decayed over time.”⁸⁷

The study did show, however, that the effects of diversity training on cognitive learning remained stable or increased over time.⁸⁸ In other words, participants were more likely to remember the substantive material from the training, even if their biases remain intact. Ultimately, researchers concluded on the “criticality of offering diversity programs as a part of a well-thought-out *package* of diversity-related efforts.”⁸⁹

In 2018, the Minnesota Police Officer Standards and Training Board (POST) added new learning objectives for law enforcement in-service training to include crisis intervention, mental illness crisis, conflict management and mediation, recognizing and valuing community diversity and cultural differences, and *implicit bias*.⁹⁰ The Minnesota state legislature also allocated twelve million dollars to help fund the mandate.⁹¹ By December 2018, all 874 sworn officers of the Minneapolis Police Department had undergone an eight-hour training session on implicit bias.

⁸⁴ Dr. Eugene Borgida, *Briefing Transcript* (2021).

⁸⁵ Bezrukova, et al., *A Meta-Analytical Integration of Over 40 Years of Research on Diversity Training Evaluation*, 11 Psychol. Bull. 1227-1274, 1227 (2016).

⁸⁶ Ibid. at 1267.

⁸⁷ Ibid.

⁸⁸ Ibid. at 1269.

⁸⁹ Ibid.

⁹⁰ The Minneapolis Police Department Policy and Procedure Manual. (24 March 2022.)

<https://www.minneapolismn.gov/media/-www-content-assets/documents/MPD-Policy-and-Procedure-Manual.pdf>

⁹¹ <https://www.nydailynews.com/news/national/governor-asks-police-training-fund-named-philando-castile-article-1.3306016>

That same year, the Minnesota Advisory Committee made a recommendation in its report to have *on-going and sustainable opportunities for cross-sectional* implicit bias training for law enforcement.⁹² This recommendation exceeded the standard put forth by the POST Board which required only one session every three years.

The Minnesota legislature also tasked the POST Board with “evaluating the effectiveness of in-service training to reduce officer use of force and diverting people experiencing a mental illness crisis from arrest.”⁹³ Based on the POST Board bi-annual reports and testimony from panelists, the POST Board is not following the mandate from the legislature and is not evaluating the effectiveness of the required training.⁹⁴

The Board has come under criticism for putting forth objectives without a curriculum. For instance, by leaving curriculum development to each institution, there are potentially thirty different interpretations on how to incorporate each objective, such as “Describe how perception, sympathy, empathy, compassion and respect affect peace officer communication”⁹⁵ into a lesson. The effect is law enforcement officers entering active duty with inconsistent training and potentially different interpretations of basic components of professional performance.

A concern to the Committee is the science behind the training. Has the material undergone scrutiny to ensure it satisfies minimum standards based upon the needs of the Minnesota agencies? The concern was left unanswered because law enforcement chose not to participate in this study.

3. Oversight Policy

The safeguards of civil rights are more important in the administration of justice than in any other facet of society, for nowhere are the stakes higher and the margins for error narrower. It is a long-held tenet under the Constitution that the administration of justice must be both efficient

⁹² *Supra* note 6, at 54.

⁹³ Minn. Stat. § 626.8469, sub-2, (2021).

⁹⁴ Minnesota Board of Peace Officer Standards and Training, Biennial Report for Fiscal Years 2019 – 2020, <https://dps.mn.gov/entity/post/Documents/POST%20Biennial%20Report%20FY19-20.pdf>.

⁹⁵ MN Board of Peace Officer Standards and Training. *Learning Objectives for Professional Peace Officer Education*. P.3. (2021).

and evenhanded,⁹⁶ and there must be openness about the operation of justice systems at all levels of government.

The Commission on Civil Rights acknowledged the importance of law enforcement oversight when it concluded in *Revisiting Guardians* (2000) that “few changes have been implemented to improve the effectiveness of external controls of police misconduct.”⁹⁷ The Commission observed that officials are guilty of being “tough on crime but soft on police brutality.”⁹⁸ Unless changes were made, “police misconduct may continue to plague America’s cities for generations to come.”⁹⁹

In Minnesota, the legislature passed the Peace Officer Discipline Procedures Act.¹⁰⁰ The law makes it nearly impossible to get rid of bad cops, and it interferes with safeguarding fundamental rights by keeping abusive cops on the street. What is the reason for this unilateral ban against civilian oversight? The law is not necessary to achieve a compelling government purpose because each agency disciplinary process already provides due process for the accused. Unfortunately, invitations to state legislators to appear before the Committee went unanswered.

Mayor Frey of Minneapolis informed the Committee that as of April 2021, each officer of MPD had undergone implicit bias training. He said that the training needs to be bolstered and made more consistent, and the barriers were not financial but “simply one of capacity and time.”¹⁰¹ Perhaps as important, the mayor said training on “how de-escalation works and how officers are engaging and holding even one another accountable in the process”¹⁰² will be rolled out in the near future.

B. Law Enforcement Culture

The Minneapolis Police Department did not respond to numerous requests to participate in this study.

In his remarks to the Minnesota Advisory Committee in 2017, then-President of the Minneapolis Police Officer’s Federation Bob Kroll told the Committee his comment was part of his critique of

⁹⁶ U.S. Const. amend. VI.

⁹⁷ *Revisiting Guardians*, U.S. Commission on Civil Rights, (2000).

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ Minn. Stat. § 626.89 (2021).

¹⁰¹ Frey, testimony, June Briefing, p. 22.

¹⁰² *Ibid.*

President Barack Obama as “doing more to hurt race relations in this country than help them.”¹⁰³ Kroll took offense to the President’s criticism of how police handled an incident where a Black Harvard professor was arrested in his own yard because a neighbor thought he was breaking into the home.¹⁰⁴ Kroll said “he [the professor] made an incident out of it and the officer took him into custody.” Kroll, oblivious to the indignity suffered by the professor, added “all our officers are looking for is immediate compliance and questions after the fact.”¹⁰⁵ Kroll continued by explaining officers on the scene are “discovering dynamic, rapidly evolving situations”¹⁰⁶ and “the idea is to comply with what the officer requests you to do and question after the fact.”¹⁰⁷

What Kroll described is *obedience*, not compliance. Compliance is requested and leaves the subject with a *choice* to comply or not, whereas obedience is demanded against the threat of repercussion.¹⁰⁸ This distinction is key because studies have shown “when aiming to affect people’s obedience to the law, *how they are treated* may be more important than their perceived certainty or severity of punishment.”¹⁰⁹ Kroll’s statement disregards the fact that the “rapidly evolving situation” is being experienced by *everyone* at the scene, not just the police officer. All parties involved are making split-second decisions affected by stress, emotion, reaction, and above all the instinct for survival.

Clearly, this analysis is wading into social science territory beyond the scope of this report. But the concept is important in understanding the breakdowns that occur between authority (the police) and the public. The Group-Value Model¹¹⁰ is informative and states that when viewed with the lens of a privileged member of society, the police are on the scene to help *you* and they have *your* best interests at heart, which motivates you to comply with their requests and obey their command, like Kroll suggests. If, however, your interactions with police have been negative, if your

¹⁰³ Ibid. p211.

¹⁰⁴ Ed Pilkington, *Harvard Scholar Henry Louis Gates Outraged at arrest at his home*, The Guardian, 21 Jul 2009, <https://www.theguardian.com/world/2009/jul/22/henry-louis-gates-arrested-at-home>.

¹⁰⁵ Kroll, testimony, p.212.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ See Leandre Fabrigar, et al, *Conformity, Compliance, and Obedience*, Oxford Bibliographies, Oxford University Press, (2000).

¹⁰⁹ Thomas Baker, *Shared Race/Ethnicity with Police And Male Offenders’ Self-Regulating Beliefs: Exploring the Salience of Instrumental and Normative Factors for Securing Obedience*, 45, Criminal Justice and Behavior, 1918, (2018).

¹¹⁰ Thomas Baker, *Shared Race/Ethnicity with Police and Male Offenders’ Self-Regulating Beliefs- Exploring the Salience of Instrumental and Normative Factors for Securing Obedience*, 45:12 Criminal Justice Behavior, 1920 (2018). <https://www.researchgate.net/publications/327i7i888>.

perceptions of police have been shaped by unethical policing practices like being stopped without cause, or berating, insulting or threatening behavior, the propensity for your compliance is very low.¹¹¹ Further, if police are known to abuse with impunity, and use lethal force under immunity, then you are forced to weigh the odds that your obedience may or may not be in your best interest.¹¹²

The police union can reshape police culture to align with both public policy and the best ideas of social and procedural justice. Based on testimony from law enforcement during our 2017 briefings, and stakeholder input during our current inquiry, the Committee believes by accepting their place as merely a *part* of the judicial system and *part* of the on-scene equation, the union can embrace the changes that are needed to provide the People with the voice required in a social/procedural justice compact.¹¹³ Law enforcement has no rational choice other than to accept a broader definition of professionalism and display a willingness to forge a new identity that does not involve aggressive policing.

Dr. Michelle Phelps, an associate professor of Sociology at the University of Minnesota, appeared before the committee in 2021 to summarize her recent report, [*Over Policed and Under-Protected: Public Safety in North Minneapolis*](#).¹¹⁴ The report “draws on a multi-year, mixed methods study of policing, police reform, community perceptions of the police, and activist demands to change policing in Minneapolis.”¹¹⁵

Despite the mission of the Minneapolis Police Department, many residents that participated in the study expressed persistent fears about crime and victimization. Only “twenty percent rated their neighborhood safety as ‘good’ and ‘very good’ and listed neighborhood concerns like gun violence, open air drug markets, prostitution, teenage loitering, public fights, domestic disputes, high speed traffic, and intimate partner violence.”¹¹⁶

¹¹¹ Ibid. at 1921.

¹¹² See Heather Smith, et al., *The Self-Relevant Implications of the Group-Value Model: Group Membership, Self-Worth, and Treatment Quality*, 34, *Journal of Experimental Social Psychology*, 470-493 (1998) (positive treatment from group authorities indicates to people that they are valued group members; treatment that is biased, untrustworthy, or rude communicates to people their marginal status within the group).

¹¹³ Baker, *supra* note 76, at 1919.

¹¹⁴ Dr. Michelle Phelps, et al., Center for Urban and Regional Affairs, *Over Policed and Under-Protected: Public Safety in North Minneapolis*, University of Minnesota, (2020).

¹¹⁵ Dr. Michelle Phelps, testimony, p.3

¹¹⁶ Ibid. at 4.

North Minneapolis is where MPD conducts the bulk of their pro-active policing. According to the study, the Department is missing the mark on key procedural justice indicators, “less than twenty-five percent of our sample said that police officers often, or almost always did these things right, like treat people fairly, treat people with dignity, respect, and respect people’s rights.”¹¹⁷ See figure.

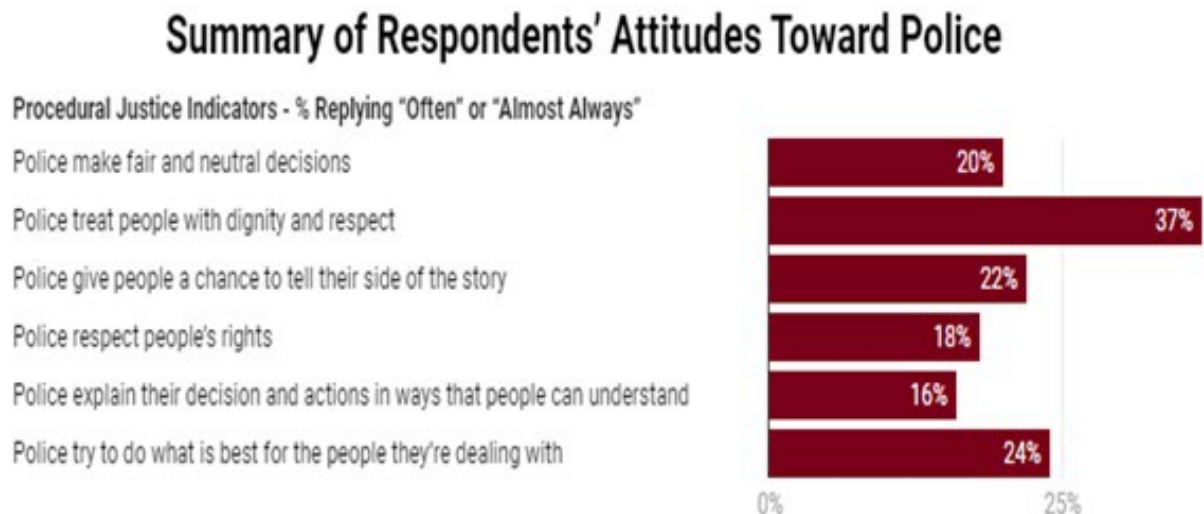


Figure 5. Summary of Respondents' Attitudes Toward Police.

Not surprisingly, over eighty - five percent of participants in the study believe “police will judge you based on your race or ethnicity.”¹¹⁸ Dr. Phelps said, “Black residents’ negative attitudes about the police were often shaped by their own negative experiences with law enforcement and those of friends and family, that included frequent stops by police, frequent criminalization, and frequent verbal and physical abuse.”¹¹⁹

Clearly there is a gap between public opinion and public policy. Is there a significant base of shared assumptions? There must be a compromise between these competing imperatives, ensuring civil rights protections while shielding law enforcement.

¹¹⁷ Ibid.

¹¹⁸ Ibid. at 5.

¹¹⁹ Ibid.

The Committee notes the policy recommendation of a recent study included the establishment of a national database of police shootings that would include information systems that would allow empirical analysis on the “interconnections among race, crime, and police use of deadly force.”¹²⁰

C. Lack of Accountability

Despite the protections laid out in the federal, state, and local laws and policies, civil rights violations are increasingly recognized as a serious concern. The Committee learned from stakeholders and social scientists that a key component to police misconduct is lack of accountability.

Dr. Stephen Rushin,¹²¹ Professor of Law at Loyola University School of Law (Chicago), spoke to the Minnesota Advisory Committee in 2021 about his research on internal police disciplinary procedures. Dr. Rushin’s research shows that a small number of officers are often responsible for a significant amount of misconduct.¹²² The ability to weed out bad cops more easily may benefit the wider police department culture.¹²³ His suggestions to address the phenomenon appeared obvious: Limit what issues police unions can legally bargain over. Exclude matters like discipline for officers who beat or kill civilians.¹²⁴

Arbitration of police officer discipline is abhorrent to our justice system because it occurs in secret, with no written record of the proceedings, and with no right to appeal the arbitrator’s ruling if the law is not applied correctly. In over half of all arbitration cases, police officers are returned to duty by the arbitrator. This includes officers that have been fired for misconduct.

The impact of including disciplinary measures in collective bargaining with law enforcement unions is ultimately an empirical question, “scholars have begun to study police unions because of

¹²⁰ David Klinger, et.al, *Race, Crime, and the Micro-Ecology of Deadly Force*, 15:1, American Society of Criminology – Criminology & Public Policy, 193-194 (2015).

¹²¹ Dr. Rushin’s work has appeared in the *Stanford Law Review*, the *University of Pennsylvania Law Review*, the *California Law Review*, the *Cornell Law Review*, the *Duke Law Journal*, the *Vanderbilt Law Review*, and the *Texas Law Review*. He published “Federal Intervention in American Police Departments” in 2017 (Cambridge University Press).

¹²² Rushin, testimony, May 27 Briefing.

¹²³ Ibid.

¹²⁴ Ibid.

their role in hampering criminal justice reform, shielding officers accused of violence against people of color, and defending racially disparate policing practices.”¹²⁵

In a June 18, 2020, news conference, Minneapolis Mayor Jacob Frey called on Minnesota lawmakers to overhaul the state’s arbitration process for law enforcement officers, saying “to get the full structural change that we know we need in Minneapolis and in cities throughout our state, we must also be focusing on a shift of culture.”¹²⁶ Mayor Mike Elliott of Brooklyn Center added that civilian oversight panels need “the authority to take action when necessary.”¹²⁷

At the same conference, Minneapolis Police Chief Medaria Arredondo said, “letting an arbitrator reduce discipline or overturn a firing erodes the public trust in the police.” Citing similar concerns, the League of Minnesota Cities and the Minnesota Chiefs of Police Association expressed support for changes in the law. Frey added that “roughly half of police terminations in Minnesota are overturned by arbitrators when appealed.”

Mayor Frey and others called for a change in laws that keep firing decisions in the hands of arbitrators instead of the city. “The current system has helped establish a culture of immunity that as hurt trust in [our] city’s police. It’s crucial that chiefs and mayors have the final say in firings for the worst kind of police behavior.”

Mayor Frey brought up the same point when he addressed the Committee in April 2021. “When I terminate or discipline an officer, almost fifty percent of the time that decision is overturned by an arbitration board and that officer is sent right back to the police department to continue violating trust with the community.”

¹²⁵ Benjamin Levin, *What’s Wrong with Police Unions?* Columbia Law Review, Vol. 120:1333.

¹²⁶ MPR News Staff, Mayors: Change Minnesota law, don’t let fired cops return to work, MPR News <https://www.mprnews.org/story/2020/06/18/mayors-change-minnesota-law-dont-let-fired-cops-return-to-work>

¹²⁷ Ibid.

A case in point, in October of 2015 Nate Kinsey, a Richfield¹²⁸ police officer, was captured on video pushing and slapping a Somali teenager which sent the teen stumbling.¹²⁹ No arrest was made, and the teen was only cited for careless driving.¹³⁰ A Somali civil rights group and news reporters reached out to the city for answers. The city did not have information on the matter because the officer, who had been disciplined on four separate prior occasions for misuse of force, had not filed an incident report as was department policy.¹³¹

The police chief requested an investigation by the Bureau of Criminal Apprehension,¹³² which yielded no criminal charges. The police chief then requested an internal investigation during which Kinsey “conceded that he had considered filing a report about his use of force and knew that the Department’s practice was to err on the side of reporting.”¹³³ Several violations of Department policy were discovered during the investigation culminating with “the police chief recommend[ing] that the City discharge Kinsey, which it did, effective April 14, 2016.”¹³⁴

Kinsey, through his union, challenged the discharge under the collective bargaining agreement. An arbitrator “determined (on technicalities) that the City did not have just cause to terminate Kinsey’s employment and ordered reinstatement with back pay.”¹³⁵ The Minnesota Supreme Court ultimately upheld the arbitrator’s decision, not on the merits, but on the holding that “state statute requires arbitration, and the City’s contract with the Union gives the arbitrator the authority to decide what constitutes just cause for termination.”¹³⁶

Richfield Mayor Maria Gonzalez decried the Court’s ruling as undermining the City’s efforts. She commented at the time, “How are we going to continue to build trust with our community, when we don’t have the power and the leverage to terminate officers that aren’t on the same page or aren’t a good fit for our community.”¹³⁷ She added, “When we fight and we push and we push to do the right thing, and we don’t have the ability to make that change, it’s disheartening, it’s frustrating, it’s upsetting and it obviously calls for some serious reform.”¹³⁸

Abigail Cerra, then-Chair of the Minneapolis Police Conduct Oversight Commission,¹³⁹ told the Committee that the “Coaching versus Discipline”¹⁴⁰ issue was a primary concern of hers. Because of

¹²⁸ Richfield, Minn. is part of the Minneapolis-St. Paul metropolitan area.

¹²⁹ *Richfield v. Law Enf’t Labor Servs.*, 923 N.W.2d 36 (Minn. 2019).

¹³⁰ *Id.* at 39.

¹³¹ *Id.*

¹³² The Bureau of Criminal Apprehension “provides investigative and specialized law enforcement services to prevent and solve crimes in partnership with law enforcement.” <https://dps.mn.gov/divisions/bca/Pages/default.aspx>

¹³³ *Richfield*, 923 N.W.2d at 40.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Jon Collins, *Half of fired Minnesota police officers get their jobs back through arbitration*, MPR News, July 9, 2020. <https://www.mprnews.org/story/2020/07/09/half-of-fired-minnesota-police-officers-get-their-jobs-back-through-arbitration>.

¹³⁸ *Ibid.*

¹³⁹ Andy Mannix, *Head of Minneapolis Police Oversight Commission Resigns, Renewing Criticism of City’s Civilian Review*, Minneapolis Star Tribune, March 15, 2022. Commissioner Cerra resigned from the Commission over “frustration with the internal city politics and bureaucracy she said prevents the board from changing police practices.” <https://www.startribune.com/head-of-minneapolis-police-oversight-commission-resigns-renewing-criticism-of-citys-civilian-review/600156298/#:~:text=Cerra%20resigned%20last%20week%2C%20after,will%20begin%20later%20this%20month..>

¹⁴⁰ Cerra, testimony, May 27 Briefing.

the Minnesota Data Practices Act,¹⁴¹ the distinction between *coaching* and *discipline* determines who has access to the records. Under the Act, the only data regarding officer misconduct that is public is the “final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of action, excluding data that would identify confidential sources who are employees of the public body.”¹⁴²

In simpler terms, Chair Cerra said, “if it’s not discipline, it’s not public,” and the designation of coaching by the MPD instead of discipline means sustained acts of misconduct by law enforcement officers that are handled by coaching are not public and are not part of the employee file.¹⁴³

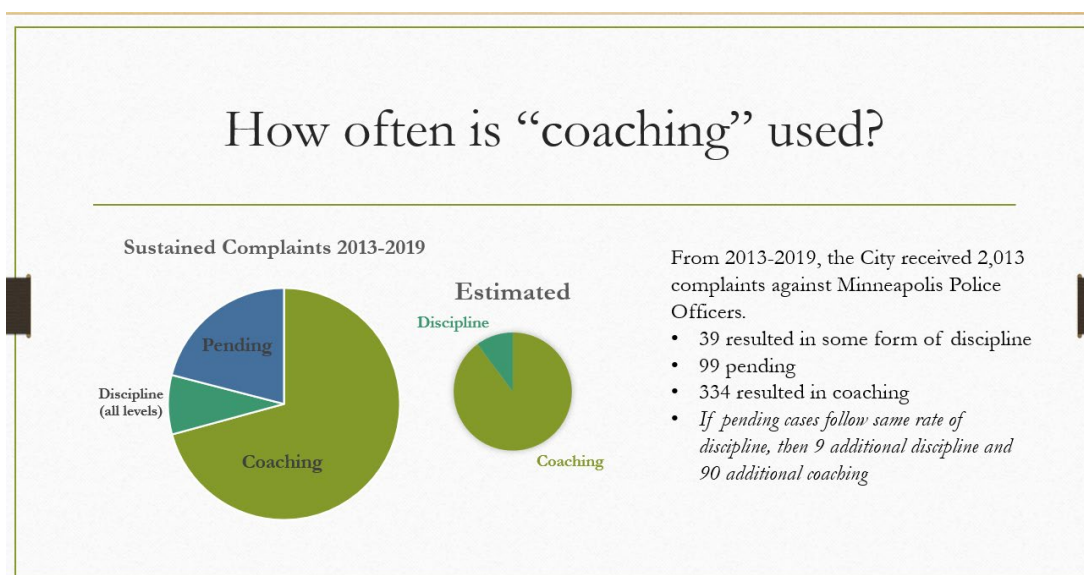


Figure 6. Use of Coaching by Minneapolis Police Department.

Chair Cerra told the Committee the department utilizes “coaching” for every level of officer infraction from using profane language to excessive force.¹⁴⁴

¹⁴¹ Minn. Data Practices Act § 13.43.

¹⁴² Ibid. at subd. 2(a)(5).

¹⁴³ *Supra* note 140, at 16.

¹⁴⁴ See Cerra testimony, May 27 Briefing, p.16-17.

Minneapolis Police Department Schedule of Discipline

- Distinguishes between Disciplinary and Non-Disciplinary
- Coaching is “non-disciplinary”
- Coaching is an available corrective action for *all* levels of misconduct, A-D
- Ex: D level violation could result in coaching or termination

Schedule of Discipline

Non-Disciplinary

Type of Corrective Action	Code
Coaching Documentation	CD
Training	T
Performance Mentoring	PM

Disciplinary

Type of Corrective Action	Code
Letter of Reprimand	LOR
Suspension	SUSP
Demotion	DEM
Termination	TERM

Range of Corrective Actions

Category	Reckoning Period	CD	T	PM	LOR	SUSP	DEM	TERM
A	1 year	X	X	X				
B	3 years	X	X		X	X		
C	5 years	X	X		X	X	X	
D	Length of employment	X	X		X	X	X	X

Reckoning Period Enhancements* of Discipline

Category	Ratio/year	Type	Enhancement	
A	2 in 1	Same/Similar	B	
A	3 in 1	Any	B	
B	2 in 3	Same/ Similar	C	
B	3 in 3	Any	C	
C	2 in 5	Any	D	
D			No Enhancements	

* **Enhancement** – Repeated violations of MPD Policy & Procedure may result in more severe corrective actions being taken against the involved employee. The enhancement schedule for discipline is listed above. In addition, the MPD may consider corrective actions outside of the reckoning period to evaluate whether the employee knew or should have known that the behavior is improper, whether the employee is responsive to corrective action or for purposes other than enhancing the level of discipline.

Figure 7. Minneapolis Police Department Schedule of Discipline.

She highlighted the difference between the police use of “coaching” versus the Minneapolis Civil Service graduated schedule of discipline which establishes a range of disciplinary actions.

Minneapolis Civil Service Rules

- Rule 11 Discipline and Removal
- Establishes range of disciplinary actions, A-E
 - A—warning
 - B—written reprimand
 - C—suspension
 - D—demotion
 - E—discharge
- Applies to **all** departments within City of Minneapolis
- No “non-disciplinary” option such as “coaching”

Figure 8. Minneapolis Civil Service Rules – Police Dept. Removal of Discipline.

Chair Cerra said the MPD schedule of discipline “creates a means by which the city or individuals can keep all levels of misconduct hidden from public view.”¹⁴⁵

Schedule of Discipline vs Civil Service Rules	
<ul style="list-style-type: none">• Schedule of Discipline<ul style="list-style-type: none">• Allows for non-disciplinary actions• Allows non-disciplinary actions for <i>all</i> levels of misconduct• Creates a means by which to keep all levels of misconduct hidden from public• Causes problems in grievance/arbitration, where progressive discipline steps not followed	<ul style="list-style-type: none">• Civil Service Rules<ul style="list-style-type: none">• Disciplinary actions• Progressive discipline• Level of misconduct corresponds to level of discipline• All sustained misconduct is public• If followed, stronger position in grievance/arbitration

Figure 9. Discipline Disparity – Police vs. Civil Service.

In addition to the lack of transparency, the schedule of discipline “causes problems in the grievance and arbitration space because the arbitrator may look at a particular disciplinary action, such as termination and say, ‘well, you didn’t actually follow your schedule of discipline and your progressive discipline policies here because this officer never had a discipline for any prior conduct, so, I am going to overturn this disciplinary decision’”.¹⁴⁶

Between 2013 and 2019, “the City of Minneapolis received 2,013 complaints against Minneapolis police officers, with 472 of those complaints sustained by review”¹⁴⁷ (meaning the complaint was valid). In those cases, only ten percent resulted in discipline, which means ninety percent of the sustained acts of misconduct by police officers were kept out of the public eye.”¹⁴⁸

¹⁴⁵ Cerra, testimony, May 27 Briefing, p.17.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid. at 18.

¹⁴⁸ Ibid.

Conclusion

It would be nice to have a tidy conclusion to offer the Commission, unfortunately, there appears to be no end in sight to the cycle of this long-standing and often circular debate over discriminatory policing. The Committee can conclude, however, that they cannot begin to answer what should be done. As urgent as the answer is, the Committee cannot begin to formulate the answer until they can see the problem clearly.

III. Findings

Where there has been dissent among Committee members in the findings and recommendations, it has been genuine and without malice. The dissenting members have added their thoughts in separate statements attached to the report.

1. Racial profiling is ineffective, it alienates communities from law enforcement and almost always violates constitutional protections against equal protection under the law, due process, and freedom from unreasonable searches and seizures.¹⁴⁹
2. There are those already in position to affect change. Police Management can hold officers accountable for rules already on the books. Prosecutors can faithfully abide by the Brady ruling. They can also serve the public by refusing to call officers with numerous violations as witnesses.
3. Policy makers at the City and the hierarchy at the Minneapolis Police Department have the authority to write the Policy and Procedure manual. The manual is unnecessarily vague in areas that provide too much discretion to the police. The manual can be re-written to provide better guidance to the officer on expected standards.
4. Arbitrators should not have the authority to overturn discipline handed down by democratically elected officials.
5. Law enforcement is a demanding and sometimes dangerous civil service that is populated with an overwhelming majority of well-intentioned officers.
6. Disparate policing practices, however, are a civil rights issue and currently exist in crisis-level numbers. As identified in this report, police departments are engaging in racially disparate practices and are violating the Constitutional rights of the People.¹⁵⁰

7. The police union, by its very nature, is populated by those with a material interest in maintaining and expanding current practices. These practices are not working, and a cultural shift is needed to embrace stronger oversight of law enforcement practices.
8. Law enforcement requires goodwill in their relationship with the People to effectively do their jobs.
9. Implicit bias training as currently offered in Minnesota is not effective.
10. Coaching as a means to discipline officers is nonsense and ineffective. It should be reclassified as a disciplinary step or not used at all in the discipline process.
11. The Minnesota Police Officer Discipline Procedures Act should be repealed or rewritten to exclude current prohibitions on community oversight.
12. Lack of police accountability erodes community trust in law enforcement.
13. Police reticence to discuss policy is unacceptable.
14. In-service training requires monitoring and evaluation at the state level for quality, consistency, and effectiveness.
15. The arbitration process (in cases of officer misconduct) undermines the authority of city government and the Chief of Police by removing disciplinary decisions from their purview. The final authority on an officer's discipline must be accountable to the People.
16. The city of Minneapolis has a detailed and progressive public facing police data system placing policing statistics readily available to the public in an easy-to-use format.
17. The city of Minneapolis has a publicly accessible Officer Misconduct Complaint Portal that shows number of complaints, investigation, and outcome metrics.
18. The committee supports the right of Minnesota Law Enforcement to collectively bargain for issues about their working conditions, wages, and benefits. The majority of the Committee, however, believes the unions should not be allowed to bargain to weaken the discipline process, or to take ultimate responsibility away from the mayor and/or the Chief of Police and place it in the hands of an arbitrator who does not answer to the public.

IV. Recommendations

The Committee believes that scrupulous dedication to due process is a basic principle of our legal system, equal justice under the law must be assured to *all* Americans. A demonstrably discriminatory administration of justice system is repugnant to the American way of life.

In past inquiries by the United States Commission on Civil Rights, discriminatory state action in voting rights, housing, education, and even jury selection, the inference or prima facie case of racial discrimination or disparate impact has been established through statistical studies. Therefore:

1. Recommend to the President and the Congress that they address racial disparity in policing as the civil rights crisis that it is.
2. The U.S. Commission on Civil Rights should hold comprehensive briefings on racial/ethnic disparities in policing. The Commission should conduct these meetings virtually to give people the opportunity to participate. The goal should be to reach findings on the disparity and the lack of centralized data with the end goal of making recommendations to the President and the Congress.
3. Recommend to the Congress that funds be allocated to the Department of Justice for nationwide, mandatory, data collection to capture police use-of-force based on indicators recommended by social scientists.
4. The Commission should explore the idea of a National Commission on Criminal Justice that would serve to standardize ethical policing across the country.
5. Recommend that all sustained allegations of officer misconduct involving interaction with the public will be met with an appropriate level of trackable discipline and will become part of a permanent record and captured on the national database. Police officers should not be able to jump from one agency to another without having their performance record follow them.
6. Make an open recommendation to Minnesota and all other states, that police officer discipline for matters involving use-of-force, should not be part of a collective bargaining process.
7. Lower the number of high discretion stops. On-going and sustainable opportunities should be made available for cross-sectional learning about implicit bias.
8. Resources should be invested to measure the effects of implicit bias training.
9. Given the gravity and threat to human life when an officer draws their weapon, technology should be pursued to automatically activate body worn cameras when a weapon is removed from its holster.
10. All policies and procedures for law enforcement must be carefully reviewed and assessed for bias.

Appendix A

Questions that remain unanswered due to law enforcement refusal to meet with the MN SAC.

Q1. What manner and strategy of policing does the Minneapolis Police Department utilize? Does law enforcement engage in Hot Spot Policing? Or Stop and Frisk Policing?

Q3. What steps has your department taken to identify the causes of racial disparity in police work?

Q4. The Data reflect disproportionate attention to communities of color. What evidence does your agency have on how this is working to achieve public safety goals? What effects does this practice have in the communities served by these aggressive forms of policing?

Q5. What changes are needed to address racially disparate policing? Is there a will to change? Why hasn't more been done?

Q6. Does the police department have the authority to make the needed changes?

Q7. What constitutes a bad police officer, and can they be removed from duty?

Q8. What is the department policy on use of force? Use of deadly force?

Q9. What is the accepted strategy for de-escalation? What is the department expectation of the officer on the scene?

Q10. What is the primary objective of a traffic stop? Does revenue play a part? Quotas? Merit promotion?

Q11. Do the People have a right to oversee the discipline process?

APPENDIX B

~~Separate Report and~~¹⁵¹ Dissent of Minnesota State Advisory Board Committee Member Larry Purdy

(28 September 2022)

Introduction

Beginning in 2020, following the death of George Floyd while in the custody of four Minneapolis Police Department officers, this Committee commenced a study that, among other things, sought to investigate the following questions:

1. Did Minneapolis City leaders (Mayor and City Council) and the leadership of the Minneapolis Police Department (MPD) receive, review, and implement any of the recommendations set forth in a previous Committee's 2018 Report entitled *Civil Rights and Policing Practices in Minnesota* [hereinafter "2018 Report"]?¹
2. Would the implementation of any one or more of the 2018 Report's recommendations have altered the outcome in the May 25, 2020, incident involving George Floyd?

The evidence received by the Committee seems conclusively to have established that: (1) The 2018 Report was essentially ignored by the responsible State and local political and law enforcement authorities; and (2) none of the 2018 recommendations -- had they been adopted by the MPD -- likely would have altered the outcome in the George Floyd incident.²

Answering the above questions would be important, in part, to hold accountable Minneapolis City officials and the leaders of the MPD for their actions and/or inactions in connection with the 2018 Report. For example, regardless of whether the adoption of any of the recommendations contained in the 2018 Report would have prevented the death of Mr. Floyd, questions still remain as to whether any of the recommendations might have led to improved policing and/or led to different outcomes in more recent high-profile incidents.

However, instead of focusing on those two questions, the Committee largely reverts to criticisms of law enforcement made in the 2018 Report, relying almost exclusively on statistical data regarding racial

¹⁵¹ Words stricken by USCCR Staff, SAC members are allowed to submit a dissent statement not a separate report.

disparities in, among other things, vehicular stops, arrests, incarcerations, and deaths of minority citizens caused by MPD personnel.

In addition, the Committee points to an April 27, 2022, MN DEPARTMENT OF HUMAN RIGHTS Report (“MDHR 2022 Report”) which was published after the circulation of the first draft of the Committee’s proposed 2022 report. The MDHR 2022 Report has been heavily incorporated into the Committee’s final draft report notwithstanding the fact that neither the Commissioner of the Minnesota Department of Human Rights nor any person directly involved in its preparation appeared before the Committee to explain, much less defend, its conclusions.

Despite the absence of supporting testimony and an opportunity to explore the methods and analysis used by the MDHR in preparing its report, the Committee apparently adopts the central “finding” of the MDHR, to wit: “there is probable cause that the City and MPD engage in a pattern or practice of race discrimination in violation of the Minnesota Human Rights Act.” I find the Committee’s incorporation of this “finding” to be unsupported by the evidence before the Committee; and based on questionable research and analyses by the MDHR.³

Discussion⁴

Dr. Ebony Ruhland, who provided testimony to this Committee on April 29, 2021, succinctly summarized what, in my opinion, should have been included among our principal tasks, to wit: “. . . *[T]he conversation needs to shift from ‘do racial disparities exist?’ to ‘we understand racial disparities exist but now we need to understand why they exist and how to reduce [them].’*” (Emphasis in the original.)

I agree with the question posed by Dr. Ruhland. The problem is nowhere in our work does the Committee meaningfully address the “*why*?”⁵ other than asserting that the statistical disparities “are sufficient to conclude that the effect of the current policing policies in the State lead to discriminatory policing.” In short, it is an accusation that the MPD’s current policing policies are systemically racist.⁶

However, before making such an allegation, it is important to define the phrase “systemic racism.” A standard definition is found in the Oxford English Dictionary (online):

Systemic Racism (noun)

1. discrimination or unequal treatment on the basis of membership in a particular ethnic group (typically one that is a minority or

marginalized), *arising from systems, structures, or expectations that have become established within society or an institution.* (Emphasis added.)

Thus, before concluding that “racism,” much less “systemic racism,” explains the above disparities, we must begin by accurately identifying an “established” MPD “system” or “structure” that results in “discrimination or unequal treatment” of BIPOC members of Minneapolis’ communities.⁷

While there is nothing wrong with hypothesizing that racism may play a role in the disparate statistics referenced in the 2018 Report (and in the MDHR 2022 Report), it is unwarranted to simply default to “systemic racism” as the reason for these disparities. To state it another way, there almost certainly are “systemic” explanations for the disparities in question. For example, well-known social pathologies (e.g., out-of-wedlock birth rates, fatherless homes, a failure to complete one’s education, and involvement with gang-related drug and street crime, as well as the locations where crimes more frequently occur and by whom they are committed) are widely believed to cause or contribute to these disparities. Of course, to the extent racism on the part of the MPD is shown to contribute to the problem, the remedy would be clear: Revise substantially, or eliminate altogether, policies that lead to unfair and unequal treatment of citizens based on their race.

Thus, the challenge the Committee faced was to identify *specific* MPD policies or procedures that *encourage, induce, or tolerate racist behavior* on the part of MPD personnel. This, I believe, the Committee has failed to do.

For several years now and increasingly following the death of George Floyd on May 25, 2020, we have witnessed an ongoing breakdown in law and order to which our elected officials have failed to adequately respond. That breakdown has been accompanied by an increase in denunciations of MPD personnel from public officials and some community members, claiming that the MPD is systemically racist. The Committee’s report fails to fairly address the question of whether these claims are justified. The report also ignores important questions such as how these criticisms impact public safety,⁸ including the adverse impact on police recruitment⁹ and training, as well as the adverse impact on the policemen and women themselves in terms of their willingness to serve as members of law enforcement.

Reaching beyond the specifics of the tragedy surrounding the death of Mr. Floyd, the overriding question remains: Has the Committee been provided with evidence sufficient to support a claim that the MPD is infected with racism – or stated another way, does “white supremacy” or other racially biased behavior (implicit or otherwise) pervade policing in Minneapolis (*see, e.g.,* Minnesota Justice Research Center report “Trust in Policing: The Role of White Supremacy,” dated February 2021)¹⁰?

No Committee member disputes the statistical evidence showing racial disparities when it comes to arrests and incarcerations. These data demonstrate that members of our BIPOC community (exclusive of Asian Americans) are subjected to “traffic stops and searches, use of force, and arrests” in Minneapolis at levels

higher than their relative presence in the community. However, this statistical evidence does not prove racial bias in MPD's policies or its policing.¹¹

Instead, the more compelling evidence – indeed, one can argue the *only* compelling evidence – was provided by witness Heather Mac Donald, a nationally recognized expert and prolific author on the topic of policing and crime. The evidence is not complicated. In short, according to Ms. Mac Donald, the explanation for these statistical disparities nationwide is based on the level of criminal activity, i.e., when and where the crimes occur, and by whom they are committed. Minnesota's most recent crime data lends support to Ms. Mac Donald's analysis.¹²

Whatever may be the root cause(s) for these racial disparities, no one disagrees that it is critical to identify and then work to eliminate them.¹³ From a civil rights standpoint, this is particularly true if the root cause can be tied to racist behavior on the part of law enforcement personnel. However, in my opinion, such evidence is lacking from the record before us. Granted, individual officer misbehavior can occur; but the behavior of a "bad cop" does not justify the indictment of an entire police department.¹⁴

Returning to a discussion of the statistical disparities in question, the Committee received testimony directly from the Honorable Jacob Frey, the Mayor of Minneapolis. Following his opening remarks to the Committee, I asked Mayor Frey to share his views as to the "root causes" for these disparities. Notably his response was, "white supremacy."

Thereafter, I submitted a series of follow-up questions to Mayor Frey as well as to other witnesses, including Minnesota Department of Public Safety Commissioner John Harrington, former Minneapolis City Councilman Steve Fletcher, and Mr. Justin Terrell. I asked each of them to provide the Committee with any and all evidence that, for example, "white supremacists" and/or "white supremacy" were in any way implicated in the deaths of George Floyd, Jamar Clark, and Daunte Wright.¹⁵ I never received any responses to my inquiries.

On a related topic, I asked these witnesses whether they believed other well-known social pathologies (e.g., out-of-wedlock birth rates, fatherless homes, a failure to complete one's education, and involvement with gang-related drug and street crime, as well as the locations where crimes reportedly occur)

played any role in the disparate statistics we see.¹⁶ Again, no responses were ever received.

To be clear, I assume the Committee along with Commissioner Harrington, Mayor Frey, and the Minneapolis City Council genuinely desire to improve policing, and in the process reduce antagonisms that may exist between the MPD and the communities these men and women serve. There is also a common desire to identify and remove "bad cops" from the MPD, and to hold accountable those law enforcement personnel who fail to treat equally every citizen regardless of his/her race or ethnicity.

To the extent greater accountability and transparency in law enforcement is being sought, I concur with the importance of implementing improvements in those areas. But in my humble opinion, that accountability should principally be borne by the State's and City's political and law enforcement leaders; yet nowhere does the Committee meaningfully address the failures of these public officials.

The Committee also heard suggestions from some City leaders regarding how to improve policing. For example, former Minneapolis City Councilman Fletcher offered several suggestions that would, if adopted, dramatically reform the manner in which "community policing" is conducted. With his suggestions in mind (which, as I understood him, would arguably remove or diminish the role of armed police personnel as first responders), I asked him to provide the Committee with the details of precisely how he would have us reimagine policing in Minneapolis given the suggestions he made. I received no response.

Finally, it cannot go without mention that the United States Department of Justice (DOJ) has initiated a review of the MPD following George Floyd's death (which, as of this writing, remains ongoing). It is reasonable to conclude that the existence of this review, in large part, explains our inability to obtain input from current law enforcement personnel.¹⁷ In addition, despite our request, one preeminent national expert, Harvard University Professor Roland G. Fryer, Jr., was unable to accommodate our request for testimony (though some of his most important written work is cited – albeit selectively -- in the report). This is unfortunate because Professor Fryer's work is especially relevant to questions surrounding alleged racial bias when it comes to racial disparities in police use of lethal force.¹⁸

CONCLUSION:

Our efforts over the past two years have -- for better or worse -- been hampered by the need to remain consistent with the 2018 Report, a report that, in my view, was filled with *anti*-police bias. In addition, Committee members who signed on to the 2018 Report may understandably feel bound to the positions they took four years ago. (Obviously I am not so bound.)

Second, as mentioned, above, and for reasons beyond the Committee's control, we have been unable to develop obtain critical input from current law enforcement personnel.

And finally, since the Committee voted (over my lone dissent) to proceed with a report, two additional events have occurred. First, the Police Officer Standards and Training (POST) Board in Minnesota has initiated a number of changes in response to instances of alleged police misconduct;¹⁹ and, second, President Biden has issued an Executive Order calling for additional changes in policing.²⁰ Given these developments, I see no purpose in submitting a report to the Commission *at this time* that may, in the end, be rendered moot by the above- mentioned actions and the ongoing DOJ investigation.²¹

In summary, and for all the reasons stated, above, I cannot join any report which, based on the present and undeniably incomplete record, concludes that the Minneapolis Police Department is driven by bias against racial minorities.²²

Therefore, I respectfully dissent.²³

Larry Purdy

1 I was not a member of the Committee in 2018.

2 A general recommendation that conceivably might have been relevant would have related to “training” in the use of potentially injurious/lethal force; but even here, the knee-neck restraint method employed in the incident involving George Floyd was fully authorized at the time of Mr. Floyd’s encounter with the MPD. Nowhere was that restraint method addressed in any previous recommendation made by the Committee. Nor was it shown that *racial animus* played any role in former officer Derek Chauvin’s decision to employ the knee-neck restraint method (which a jury later determined to have been the cause of Mr. Floyd’s death). It is also noteworthy that since June 5, 2020, the City of Minneapolis and the MPD implemented a complete ban, without exception, on the use of chokeholds and neck restraints.

3 In my opinion, this “finding” appears to be the product of heavy *anti*-MPD bias on the part of the MDHR as opposed to careful research and methods of analysis, all of which might have been more fully explored had the Commissioner and/or others directly involved in the preparation of the MDHR 2022 Report appeared before the Committee. In that regard, see the end notes 4 and 5, *infra*.

4 For the purposes of this dissent, the statistical disparities cited in (i) the 2018 Report, (ii) the MDHR 2022 Report, and (iii) the Committee’s final report are generally acknowledged. But even presuming their accuracy, they do not support the current report’s conclusions and recommendations. See the detailed research set forth in fellow Committee member Professor Ian Maitland’s separate dissent (which I join and incorporate herein).

5 The report goes on to quote former MPD Chief Janee Harteau as saying “the only way we could really understand the *why* is if we started to track the numbers.” (Emphasis in original.) But there is little dispute about “the numbers.” For the purposes of this dissent, it is acknowledged that BIPOC individuals in the Twin Cities are disproportionately overrepresented in the numbers in question (as noted in the report, regarding “traffic stops,” “searches,” and – relying, in part, on Harvard professor Roland Fryer, Jr.’s research – “use of force”). Yet, as is the case throughout the Committee’s report, conclusions about the explanations for these disparate statistics (e.g., “the correlation between police use of force and minority status”) cannot be reached based on the incomplete data available.

6 A broader question was set forth in the April 2022 [Draft] Report: “This policy study is intended to ascertain whether law enforcement agencies in Minnesota, in particular the Minneapolis Police Department (MPD), are engaged in systemic practices that lead to disparate policing against people of color, and whether certain policing policies are contributing to that disparity.” (See page 2 of the April 2022 draft report.) These are appropriate questions.

However, scant evidence, if any, exists to support an allegation that “systemic practices” are contributing to the disparities in question. This, of course, demonstrates the need for, among many things, objective input from the law enforcement community, especially the MPD, as well as from members of the broader community who are supportive of the MPD and the manner in which its personnel carry out its job of protecting public safety.

7 The Committee has suggested, without any proof, that policies surrounding such things as collective bargaining agreements lead to racially biased policing.

8 https://www.wsj.com/articles/minneapolis-recover-george-floyd-death-violent-crime-shooting-black-lives-matter-blm-police-defund-murder-gun-ilhan-omar-don-samuels-11653064042?mod=MorningEditorialReport&mod=djemMER_h

9 https://www.americanexperiment.org/police-recruits-plummet-at-community-college-training-programs/?utm_source=ActiveCampaign&utm_medium=email&utm_content=Tracking+the+All+eged+Feeding+Our+Future+Scandal+&utm_campaign=Friday+Newsletter+2%2F4

10 The MJRC report was submitted to the Committee by Justin Terrell. Following my review, I asked Mr. Terrell to provide evidence suggesting any of the involved police officers in high-profile police shootings (see endnote 15, *infra*) were affiliated with white supremacists or impacted by white supremacist ideology. I received no response from Mr. Terrell.

11 See fellow Committee member Maitland's separate analysis.

12 <https://www.americanexperiment.org/the-demographics-of-crime-in-minnesota-with-updated-2021-data/>

13 See testimony of Dr. Ebony Ruhland. As indicated in the body of the text, I agree with Dr. Ruhland's observation concerning the critical question before us. However, the focus on "diversity . . . cultural differences, and *implicit bias*" as the purported reasons for, and the means by which to correct, the racial disparities is, in my humble opinion, misplaced.

Fundamentally, in terms of "diversity" and "cultural differences," one cannot ignore the fact that two of the four MPD officers charged in the death of George Floyd are members of the BIPOC community. Nor can we ignore Minnesota Attorney General Keith Ellison's post-*Chauvin* trial/post-conviction public statements that *racial animus* played no role in Mr. Floyd's death. Thus, "racial diversity," "cultural differences," and "implicit bias" (the latter of which, however it is defined, presumably applies equally to every individual irrespective of race) all fail to explain that tragic incident. I posed other potential explanations for these disparities in my follow-up written questions to several witnesses (e.g., what were the circumstances that placed Mr. Floyd in the position he found himself on May 25, 2020?); but no witness responded to my inquiries.

14 Recent Minnesota State Court jury verdicts involving two police officers amply demonstrate that accountability exists when it comes to *individual* instances of police misconduct. (See, e.g., jury trial outcomes involving the deaths of George Floyd and Daunte Wright.)

15 The 2018 Report referred to the highly publicized shooting deaths of black males, including: **Philando Castile**. The police officer involved in that shooting was identified as an Hispanic male. He was later indicted, tried, and acquitted by a racially diverse jury in Ramsey County. The 2018 Report also referenced **Jamar Clark**. Mr. Clark's death was investigated by the Obama administration's DOJ which determined that no charges against the white Minneapolis policemen involved were justified.

[https://www.justice.gov/opa/pr/federal-](https://www.justice.gov/opa/pr/federal-officials-decline-prosecution-death-jamar-clark)

[officials-decline-prosecution-death-jamar-clark](https://www.justice.gov/opa/pr/federal-officials-decline-prosecution-death-jamar-clark). More recently, a veteran white female police officer was indicted, tried, and convicted in the death of **Daunte Wright** (although widely available bodycam video of that incident does not suggest *racial animus* was involved). And finally, the first officer indicted for the murder of **George Floyd** was tried, convicted, and sentenced to a lengthy prison term. The three other officers involved in the Floyd incident (two of whom themselves are members of Minnesota's BIPOC community) were convicted in federal court of violating Mr. Floyd's civil rights. One of the three officers (a white male in his first week with the MPD) has recently pleaded guilty to manslaughter. As of this writing, the state criminal trials of the two remaining officers (both of whom are members of the BIPOC community) have not yet occurred.

16 A more provocative question is whether the Committee should be focused on the adverse impact on the *civil rights* of the innocent families residing in Minneapolis' high-crime areas. E.g., are neighborhoods with large BIPOC populations being victimized by those who criticize policing when that criticism results in the reluctance of the MPD to aggressively enforce the law in these areas? It cannot be overlooked that the rates of serious criminal activity in Minneapolis have reached near-record levels over the years 2020-2022 which many attribute to criticisms of the MPD both preceding and following the death of George Floyd.

17 The Committee seemingly draws a negative inference from the failure of law enforcement personnel to participate in our current investigation. I find no basis for such an accusation when it is clear the active, ongoing DOJ investigation fully explains the reason why law enforcement personnel would not participate in our hearings.

18 First published in 2016, Professor Fryer's paper explored racial differences in police use of force. *See*, Roland G. Fryer, Jr., "An Empirical Analysis of Racial Differences in Police Use of Force," National Bureau of Economics. While the current Committee's report selectively adopts portions of Professor Fryer's landmark research, it pointedly ignores arguably more important conclusions that run contrary to the Committee's clear anti-police bias.

19 *See*, <https://www.pbs.org/wgbh/frontline/article/minnesota-police-board-post-rules-allow-revoke-police-officer-license/>.

20 *See*, <https://news.yahoo.com/biden-signs-executive-order-police-123920666.html>.

21 Nothing in this dissent is intended to address the merits (pro or con) of the changes being proposed by the POST Board or contained in President Biden's Executive Order.

22 Among the Committee's "Findings" is one – whether intended or not -- that specifically rebuts the allegation that the MPD is comprised of racist officers and otherwise represents a systemically racist institution. *See* Finding #5: "*Law enforcement is a demanding and sometimes dangerous civil service that is populated with an overwhelming majority of well-intentioned officers.*" (Emphasis added.) I am unaware of any evidence which suggests otherwise and therefore fully concur with this "Finding."

23 After reading the final draft of the report adopted by the majority, I respectfully add the following **Addendum**:

First, I agree with a statement contained in the preamble to the Committee's list of extensive Recommendations, to wit: "A demonstrably discriminatory administration of justice system is repugnant to the American way of life."

Second, I agree with the "Conclusion" adopted by the majority that we are engaged in a "long-standing and often circular debate over discriminatory policing." I also concur that the answer to this debate cannot "begin to be formulate[d] . . . until we can see the problem clearly." (Emphasis mine.)

In my humble view, the Committee fails to "see the problem clearly," (e.g., its unwillingness to consider the many *systemic* explanations behind the statistical disparities highlighted throughout the report) and, thus, does nothing but perpetuate the "circular debate over [alleged] discriminatory policing." Even more frustrating is the fact that some of our principal witnesses refused to respond to explicit inquiries about other *systemic* explanations for the disparate statistics upon which the entire majority report is premised. *See* references in this dissent to "out-of-wedlock birth rates, fatherless homes, a failure to complete one's

education, and involvement with gang-related drug and street crimes [as well as when and where criminal activity occurs and by whom these crimes are committed].” The only witness who addressed some of these critical topics was noted scholar and author, Heather Mac Donald. Yet her most important observations were entirely ignored in the majority report.

As for the Committee’s "Findings" and “Recommendations,” they are, in my opinion (and with the exception on Finding #5), largely unsupported by the evidence.

Appendix C

DISSENT

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I wholly concur in fellow committee member Larry Purdy's dissent, and I add a few comments of my own on Minnesota Advisory Committee to the United States Commission on Civil Rights, "Civil Rights and Policing," August 2022 (draft). ("Report").

1. **Our report should note that the evidence suggests that Derek Chauvin was a bad cop, not a racist cop.**

I think it was entirely appropriate for the committee to lead our report with George Floyd's murder. It was the catalyst for our study. However, having done so, I believe that we should have noted that there is no evidence that former Police Officer Derek Chauvin's actions were motivated by racism, as has been acknowledged by state of Minnesota Attorney General Keith Ellison. Ellison had the option of charging Chauvin with a hate crime, but he conspicuously chose not to do so. He explained his decision as follows: "We don't have any evidence that Derek Chauvin factored in George Floyd's race as he did what he did" (60 Minutes, 2021).

Plainly, if Ellison is right, and Chauvin was a bad cop rather than a racist cop, then it is questionable whether the Floyd case raises any questions of national civil rights policy or federal civil rights laws. His actions, deplorable as they may have been, were not "based on race." They might have happened to a citizen of any color -- as indeed they have. That is shown by the case of Tony Timpa who died under almost identical circumstances. As Columbia University's John McWhorter (2020) has pointed out: "Had Tony Timpa been black, we would all likely know his name by now. Had George Floyd been white, his name would likely be a footnote, briefly reported in Minneapolis local news and quickly forgotten."

2. We cannot infer Minnesota Police Department malpractice from raw racial disparities.

The report notes that, over the decade or so from 2020, sixty-three percent of all use of force incidents that MPD officers recorded were against Black individuals.” From statistical disparities like this one, it goes on to “deduce” that (“at a minimum”) the policies of the Minneapolis Police Department produce disparate policing practices impacting people of color. MNSAC (2022, p. 16) “feels” that the weight of these statistics is dispositive.

Such disparities are tragic, but without more evidence, they are not discriminatory. It can’t be inferred from, say, the fact that Blacks are more likely to be subject to police use of force that they have been targeted because of their skin color. A simpler and more natural explanation is that crime is higher in many predominantly black neighborhoods. As a result, police may make more frequent stops and arrests in in black neighborhoods, and inevitably some of these stops and arrests have escalated into violence. In other words, the observed racial disparities may be what social scientists call a spurious correlation, i.e., a non-causal one. (“Correlation is not “causation”).

It is undisputed that blacks are arrested at higher rates than other races in Minnesota. According to 2019 Minnesota Crime Report, blacks were arrested at nine times the rate of whites (Minnesota Bureau of Criminal Apprehension (2020). Of course, it is possible that the arrest records might have been be tainted by the fact that arrests depend on the judgment of police officers. But other statistics, that are less susceptible of manipulation, tell the same story. Twin Cities PBS (Jackson, 2021) recently reported that, in the first 7 months of 2021, blacks were 21 times as likely to have been shot than whites. It is almost the job definition of a police officer that he (or she) runs toward the sound of gunfire. Therefore, if violent crimes are more frequent in black neighborhoods, innocent blacks will have more run-ins with police, and more run-ins with police will mean a greater chance of police use of force against blacks.

In a submission accompanying her testimony, Heather Mac Donald (2021) described the impact on law-abiding black men and offered advice that our report could have profited from:

We can stipulate, however, that law-abiding black men are more likely than white men to be stopped and questioned at some point in their lives because they meet a suspect description. That higher chance of being stopped is a result of the fact that one third of all black men have been convicted of a felony. With that large a proportion of criminal offenders in the broader population, the chances are higher that an innocent black male will share some characteristic--make of car, say, or physical traits--with a suspect who is being sought by the police. That is a

crime tax paid uniquely and tragically by law-abiding blacks. The solution to it is not to demonize the police, it is to lower black crime rates.

3. Our report should have heeded warnings about the hazards of relying on population statistics to make inferences about discriminatory policing.

The fallacy underlying the report's method of equating statistical disparity and police discrimination was discussed in the paper that Harvard Professor Roland Fryer submitted to the committee in lieu of testimony (2016/9) and elsewhere (Fryer 2018). Other sources, too, have warned of the risks of using population benchmarks (e.g., the black share of a particular population) to make inferences about police policies and practices.

The Center for Policing Equity's director Yale Prof. Philip Atiba Goff et al. (2016) points out that:

[using population as a benchmark] provide[s] only a crude method for estimating disproportionality. [In the case of police use of force, a population benchmark allows] for an inference that force is being used in a manner that is disproportionate to *presence in the general population*, but do[es] not allow for a clear inference as to whether the force is disproportionate to presence in any particular area or to legitimately provocative behavior.

Fryer (2018) makes the same criticism of suggestions in some news accounts -- Washington Post (2015), The Guardian (2015), VICE (2017) and Ross (2015) -- that "large racial differences relative to population in officer-involved shootings (OIS) are evidence of racial bias or, at the very least, problematic."

Fryer continues:

[These] statistics [in the newspaper accounts], while poignant, do not prove racial bias. Indeed, when I compare the different data sets described above using a common estimating equation I conclude that the 'evidence for bias' in some studies and not others is mainly a result of misspecified regression equations, not inherent differences in the datasets. . . . To draw firm conclusions about the 'race effect' one needs to assume that once this sparse set of variables is accounted for, race is 'as good as randomly distributed' and that there are no other differences in suspect behavior or any other potential contextual factor that is important. With tremendous respect to the herculean efforts of The Post and Guardian for collecting new data on one of the most important social issues of our time, this assumption is ludicrous and one can make no such claims of any 'race effect' using this data."

4. The 2018 U.S. Commission on Civil Rights report is unreliable and we shouldn't rely on it.

I think it is ill-advised for our report to rely on our flawed 2018 U.S.C.C.R. Civil Rights report. Our earlier draft quotes the 2018 report as stating that “[the negative effects of uneven policing practices against communities (e.g., racial and ethnic, LGBT, immigrant, disability) are *well documented* in the social science literature” (emphasis added). But that is misleading. There is a very live controversy among social scientists over the impacts of policing practices on African-American and other communities. For example, the 2018 report cites Fryer’s landmark 2016/2019 study of four cities that found no racial differences in officers’ decisions to “shoot” or “not shoot” in cases of fatal shootings. It correctly notes that a number of scholars have challenged Fryer’s methods. What would be more shocking would be if a major study on an issue of such importance had escaped *without* controversy. With no serious attempt to evaluate the challenges, the report goes on to ignore Fryer’s findings about fatal shootings. But, while it disregards his finding about OIS (officer involved shootings), it uncritically embraces his apparently more palatable findings about racial disparities in *non-lethal* interactions between police and civilians. Another authority cited by the 2018 report is Goff (2016). The team of researchers led by Goff looked at use of force by police officers during arrests. They found that, for all offenses, Blacks were more likely to have been subjected to force, but whites were almost twice as likely to have been subjected to deadly force. (The differences were not statistically significant). The 2018 report cites the first finding, but omits the second. (The second finding, of course, corroborated Fryer’s finding about officers’ decisions to shoot).

5. The recent academic literature on officer-involved shootings (OIS) tends to corroborate Professor Fryer’s finding of no racial difference in fatal shootings

My own unscientific survey of the literature on officer-involved shootings since Fryer’s 2016 study generally appears to corroborate Fryer’s finding that Blacks are *not* more likely to be victims of police shootings than Whites in similar circumstances. I summarize my findings below. However, all the usual caveats apply, and more. All the studies have their limitations, and they vary in quality, location where use of force occurred and times. In the interests of space, I have condensed the findings to the issues of racial disparities in OIS’s and other uses of force. In the process, I have undoubtedly made some mistakes. I leave them for readers to find. In addition, many of these findings are controversial and/or have been challenged. Finally, we should take the advice of the University of Chicago’s James Heckman. He has said (Passell 1996) that empirical research on sensitive issues of public policy needs to be treated with great caution: "There is a common misunderstanding that there is objectivity in numbers."

Survey of post-2016 findings

- Cesario et al. (2019) (after adjusting for crime there is no systematic evidence of anti-Black disparities in shootings).
- Geller et al. 2020 (finding significant racial disparities in use of non-lethal force, but estimates of disparities in lethal force statistically uncertain).
- Jetelina et al. (2020) (officer race/ethnicity was not associated with the race/ethnicity of the civilian during OIS incidents). (But see criticism in Knox & Mummolo 2020).
- Mentch (2020) (fatal shootings differ dramatically from the racial make-ups of the populations but, after controlling for local arrest statistics, deaths are more or less in line with what would be expected)
- Miller et al. (2017) (blacks are not more likely than non-Hispanic whites to be killed or injured during a stop/arrest).
- Nix et al. (2017) (Black citizens no more likely than White citizens to have been attacking an officer when shot; Black citizens were more likely to have been unarmed when shot; but see Fryer's critique ("Nix et al. (2017), using the data in [Washington] Post (2015), employ this approach – accounting for a small set of covariates and claiming the residual is 'implicit bias'"). See also Klinger & Slocum (2017) and Wheeler (2020).
- Phillips and Kim (2021) (race showed almost no influence on officers' decisions to shoot).
- Ross et al. (2021) (replication of Cesario et al. (2019)) no evidence of anti-Black racial disparity in police shootings of armed individuals after crime rates accounted for (actually an anti-white disparity); but anti-black disparity among unarmed and non-aggressing suspects, accounting for 5-10% of the killings. See Cesario 2021 who disputes latter claim).
- Shane (2017) (patterns are not consistent with the national rhetoric that the police are killing Black people because of their race).
- Shjarback & Nix (2020) (Blacks not more likely to be shot in Texas, but more likely in California).
- Streeter (2019) (racial disparity in the rate of lethal force is most likely driven by higher rates of police contact with African Americans rather than officer bias).
- Tregle et al. (2019) (Blacks less likely to be fatally shot by officers than whites).
- Wheeler (2018) (African Americans less likely than Whites to be shot when officers have drawn firearms)
-

- Worrall et al. (2020) (black suspects were no more or less likely to have weapons drawn against them than other suspects).
- Worrall et al. (2018) (In officers' decisions to point and shoot/not shoot a suspect Black suspects were approximately one-third as likely to be shot as other suspects).

6. Other limitations of the literature on police use of force

Another reason why we should be cautious about drawing inferences from the available social science on police use of force – whether lethal or not – is that it appears to be biased by its failure to adequately account for citizen resistance toward police officers. In a recent review of the literature on the use of lethal force, Shjarback and Nix (2020) say that one of its greatest limitations is the fact that “citizen contacts with officers and arrests fail to capture levels of resistance or perpetration of violence/aggression toward law enforcement – which are absolutely relevant to the study of police use of deadly force.”

This problem isn't limited to lethal force. For example, Goff (2016) acknowledges that his research team's analysis does not use any controls for what it calls citizen “resistance,” and he candidly admits that there may be systematic racial differences in resistance. Even Fryer's formidable study (2016, 2019) may not be immune to this criticism. Lorie Fridell (2017) claims that “[w]hat Fryer calls ‘subject behavior’ in his models, refers to behavior that occurred “*before* the stop (and may have led to the stop) rather than behavior during the stop.” As a result, despite his battery of 125 controls reflecting individual, situational, and contextual factors, his study does not control for *level of resistance*. “Without this control variable,” Fridell says, “you may be able to draw conclusions about *disparity*, but you would be remiss to claim you measured the presence or absence of bias as a factor producing that disparity.” (Fridell was commenting on the 2016 version, but so far as I can judge Fryer did not make changes in the final version in order to address Fridell's criticism).

To see why this matters, consider what the available evidence has to say about resistance to arrest and other forms of physical non-compliance by citizens in interactions with police. First, a lot of evidence suggests that resistance is the strongest predictor of use of force by officers – deadly or otherwise (See studies cited in Fridell 2017). Second, such resistance strongly predicts citizen injury. (Worrall et al. (2018) recently found that an aggressive citizen was 29 times more likely to be shot than a nonaggressive suspect). Third, black citizens are more likely to resist. (Goff (2016), citing Smith et al. (2009)) cites a finding that the rate of officer injury is lower when arresting a white suspect than a suspect of another racial group).

The day after George Floyd’s death, Minneapolis Mayor Jacob Frey said at a news conference that it was clear from the video that race played a part in the encounter. In the same news conference, he said that “being black in America should not be a death sentence.” But the evidence that I have tried to summarize doesn’t support Frey’s view that police malpractice is to blame for the disproportionate share of black deaths at the hands of police. As Robert VerBruggen (2022) points out in his review of much of the same research as mine here, “the black share of police shootings is in line with, or even below, most measures of violent crime and criminal-justice-system involvement, including the most extreme measures: homicides and cop-killings.” Given how widely this charge is repeated, it will be no surprise if more blacks may react confrontationally and antagonistically toward police, sometimes with tragic results. That is just one of the reasons why the media (and our report) must take the data more seriously before leaping to the preordained conclusion that racial disparities in police use of force are driven by racism.

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Appendix D

Recommendations from the 2018 Minn. Advisory Committee Report

1. Integrate community policing activities into all officer performance evaluation systems.
2. Create more effective policies regarding the training and proper use of tasers, chemical irritants, and other lethal and less-lethal weapons.
3. Create and implement standard operating procedures regarding the use of body cameras. These procedures should be developed with input from community members and include research-based best practices like the ones identified by the Minneapolis Police Conduct Oversight Commission.
4. Police officers should receive comprehensive use-of-force training, training in de-escalation techniques, and training in mental health interventions. Members of the community should be involved when appropriate.
5. All personnel should receive training regarding best practices in community policing, not just assigned “community operatives.”
6. Department leadership should demonstrate a sustained and meaningful commitment to the community policing philosophy to increase officer buy-in and participation. (b, c, d, e, h, g)
7. On-going and sustainable opportunities should be made available for cross-sectional learning about implicit bias. Resources should be invested to measure the effects of implicit bias training.
8. Use social media in a positive way by improving department websites that provide information about crime alerts (e.g., Minneapolis Police Department).
9. Make email addresses and business cards of individual officers readily available to the public so that members of the community may provide tips, offer feedback, and communicate concerns.
10. Resources should be made available for police officers and community partners to work together to prioritize and address public safety issues that are most important to the community. Successful partnerships go beyond the simple sharing of information and include on-going efforts to collaborate in meaningful ways to resolve problems.
11. A commitment to community partnerships should exist at all levels of a department, from command staff to supervisors to line officers (e.g., Minneapolis Collaborative Public Safety Strategies Program).
12. The accessibility of police services should be enhanced and expanded as a catalyst to community engagement and partnership. Examples include increasing the number of locations that provide police services, co-locating police and other civic services, and decentralizing complaint filing.
13. Training programs should be developed that address the effects of historical trauma on communities and police officers. These programs should include an overview of the history of policing to

thoroughly understand the legacy of trauma and how trauma is triggered through negative community police interactions.

14. Explore and promote effective methods that increase the percentage of officers who reside in communities in which they serve.
15. The U.S. Department of Justice should establish a task force in order to continue the research conducted by the President's Task Force on 21st Century Policing. This task force should:
 - a. Support the National Initiative for Building Community Trust and Justice. This project is supported by the U.S. Department of Justice, the Justice Collaboratory at Yale Law School, the Center for Policing Equity at John Jay College and UCLA, and the Urban Institute.
 - b. Promulgate the work of the task force to all policing agencies in Minnesota.
16. Create structures that ensure effective and legitimate civilian oversight of alleged police misconduct. Such structures should promote transparency, strengthen accountability, and build community trust.
17. Seek the help of skilled, independent investigators in the event deadly force is used by an officer. This should be done with the purpose of ensuring that all findings are unbiased and outcomes are equitable.
18. Adopt policies that clearly and firmly delineate relationships between local police agencies and federal agencies with respect to the enforcement of civil immigration laws.
19. The U.S. Commission on Civil Rights should conduct a national study on policing practices as they relate to civil rights. This study should focus on:
 - a. The development of best practices regarding use of force policies, including the use of deadly force. This includes examining the degree to which use of force policies vary among policing agencies.
 - b. The impact of developing technology on policing practices. Examples include body cameras, facial recognition technology, social media, and automated license plate readers.
 - c. The diversity of policing agencies across the country, including department leadership, administrative staff, and non-sworn personnel.
 - d. The level of communication that occurs between departments regarding the certification, decertification, and/or misconduct of officers during the recruitment and hiring process. This includes the sharing of information across state lines.
 - e. The application of different policing practices and strategies and their disparate impact on communities of color.

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