

# **Civil Rights *and* Policing Practices in Minnesota**



A Report of the  
Minnesota Advisory Committee to the  
U.S. Commission on Civil Rights

March 2018

## **Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

## *Letter of Transmittal*

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

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 hearings on March 21, 2017 in Minneapolis, Minnesota.

This report documents civil rights concerns raised by panelists with respect to police practices throughout the state of Minnesota and discusses possible strategies for implementing the recommendations put forth by The Task Force on 21<sup>st</sup> Century Policing (Task Force). 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 and civil rights nationwide and hopes that the information presented here aids the Commission in its continued work on this topic.

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## *Executive Summary*

### **I. EXECUTIVE SUMMARY**

A number of recent public incidents involving police use of force have brought concerns regarding racial disparities in policing to the forefront of national conversation. On November 15, 2015, Jamar Clark, a black man, was shot and killed by Minneapolis police officers after allegedly resisting arrest. Less than seven months later, on July 6, 2016, Philando Castile, who is also black, was fatally shot by a Minnesota police officer during a traffic stop. Jeronimo Yanez, the officer who shot Castile, was acquitted by a jury for the criminal charges, including second-degree manslaughter, brought against him, while no charges were ever filed in Clark's death. These incidents attracted considerable media attention and sparked protests both in Minnesota and nationwide. At one of these local protests, a white supremacist opened fire on the protestors, wounding five people and further exacerbating tensions between law enforcement and the community. In the most recent incident, which is still under investigation, a Somali-American Minneapolis police officer shot and killed a white woman who had called for 911 assistance. Responding to the challenges of contemporary policing illuminated by the public's response to high-profile incidents, on October 31, 2016, the Minnesota Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) voted to study civil rights concerns regarding policing throughout the state of Minnesota.

The contents of this report are based on panel discussions held by the Committee on March 21, 2017 in Minneapolis, Minnesota. These discussions focused primarily on developing strategies for building positive, trusting relationships between law enforcement and the communities they serve.

Several prominent themes arose from these discussions:

1. Improving interactions between law enforcement and communities of color requires building trust on both sides of the police-civilian divide.
2. Collecting and maintaining thorough and accurate data on police department practices – including hiring practices, officer demographics, and interactions between police and citizens – increases transparency and helps foster trusting relationships between communities of color and law enforcement.
3. New technology has drastically changed policing practices, but there is considerable debate among law enforcement and the community over whether these changes have been positive or negative.
4. Community policing practices can assist officers in proactively identifying and addressing public safety challenges before the need for criminal enforcement arises, thereby reducing instances of tense and potentially violent encounters between law enforcement and the community.

## *Executive Summary*

5. As the role of law enforcement in society continues to expand, it is more important than ever that police officers receive extensive, consistent training in skills ranging from crisis intervention to cultural sensitivity.
6. The mental and physical health of police officers is an often overlooked factor in developing positive relationships between law enforcement and the community. Although police officers are 2.4 times more likely to die from suicide than from homicide, many officers are reluctant to seek psychological assistance due to the stigma associated with mental illness within police culture. This reluctance is particularly troubling given that research indicates that officers who suffer from untreated emotional trauma are more likely to engage in use of force.

## **II. INTRODUCTION**

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These State Advisory Committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction.

On October 31, 2016, the Minnesota State Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted unanimously to undertake a study focused on the relationship between civil rights and police practices in Minnesota. The Committee chose to organize this study around the recommendations set forth in The President's Task Force on 21<sup>st</sup> Century Policing, particularly as these recommendations relate to policing disparities in communities of color. As part of this inquiry, the Committee hosted a public hearing to obtain testimony from academics, community leaders, judiciary and law enforcement, and policy-makers. The agenda also included an open forum for discussion whereby members of the public were invited to provide their own personal testimony to the Committee.

The purposes of this report are: (1) to relay the civil rights concerns brought forth by the panelists as they relate to disparities in police practices; and (2) to lay out specific recommendations to the Commission regarding actions that can be taken to better understand and address these issues. The report begins with a brief account of recent events involving police and communities of color in Minnesota, specifically, and the U.S. more broadly. It then offers an analysis of the civil rights concerns presented in testimony during the hearings on March 21, 2016 in Minneapolis, Minnesota. It concludes with a series of specific findings and recommendations to the Commission to further address these issues. The Committee hopes that the findings and recommendations presented in this report will contribute to the Commission's understanding of this important issue in Minnesota. Furthermore, the Committee hopes that this report will support the Commission's role in addressing this issue of national importance.

### III. BACKGROUND

In 1981, the Commission issued a seminal report on police practices in America, “Who is Guarding the Guardians?” Twenty years later, the Commission issued a follow-up report, “Revisiting Who is Guarding the Guardians?” Both reports raised troubling concerns regarding the various ways in which insular police practices serve to undermine equal protection under the law. In 2001, The Minnesota State Advisory Committee released its own report investigating the status of equal opportunity for communities of color in Minnesota, specifically looking at (1) income and employment, (2) education, (3) public safety, and (4) housing and public accommodation. Based on the findings of this study, The Committee provided the Commission with recommendations on how to improve relations between law enforcement and the communities they are assigned to protect.<sup>1</sup>

In the past several years, police shootings and alleged instances of excessive use of force have drawn increased national attention to policing practices, particularly in minority communities. With the goal of improving police practices and strengthening relationships between law enforcement officers and the communities they serve, on December 14, 2014 President Barack Obama signed an executive order creating The Task Force on 21st Century Policing (“Task Force”). The Task Force received testimony and recommendations from a wide range of individuals, including both law enforcement personnel and community leaders, and presented insights into strategies to cultivate community trust while at the same time pursuing more effective crime reduction tactics.

In May of 2015, the Task Force identified 6 “pillars” for fostering better police and community relations:<sup>2</sup>

- 1) Building Trust and Legitimacy;
- 2) Policy and Oversight;
- 3) Technology and Social Media;
- 4) Community Policing and Crime Reduction;
- 5) Officer Training and Education; and
- 6) Officer Safety and Wellness.

In order to provide technical assistance to law enforcement agencies working towards implementing the Task Force’s recommendations, in May 2016, the U.S. Department of Justice

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<sup>1</sup> U.S. Commission on Civil Rights, Minnesota Advisory Committee, *The Status of Equal Opportunity for Minorities in Moorhead, Minnesota*, 2001.

<sup>2</sup> *The President’s Task Force on 21<sup>st</sup> Century Policing*, May 2015, [https://www.phillypolice.com/assets/forms-reports/TaskForce\\_FinalReport.pdf](https://www.phillypolice.com/assets/forms-reports/TaskForce_FinalReport.pdf) [hereinafter cited as President’s Task Force on 21<sup>st</sup> Century Policing].

Office of Community Oriented Policing Services (COPS) launched the Advancing 21<sup>st</sup> Century Policing Initiative.<sup>3</sup> One of the participating agencies is the Hennepin County Sheriff's Office in Minnesota. In recent years, Hennepin County and the surrounding areas have been at the forefront of the national conversation regarding police practices. In 1993, the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System<sup>4</sup> found that in Hennepin County people of color were arrested and charged at vastly disproportionate rates. In 2003, The Council on Crime and Justice<sup>5</sup> found that in Minnesota, black, Latino, and Native American drivers were stopped and searched more frequently than white drivers. Black and Latino drivers were stopped and searched at especially high rates in suburban cities. Although white drivers were searched less often than drivers of color, arrest data showed that they were actually more likely to be carrying contraband.

More recently, the Minneapolis-St. Paul metropolitan area has found itself thrust to the forefront of the national conversation surrounding race and police practices as a result of three high profile police killings: Jamar Clark and Philando Castile, both black men, and Justine Ruszczyk (also known as Justine Damond), a white woman.

On Sunday, November 15, 2015, Jamar Clark was fatally wounded after an altercation with two white Minneapolis police officers, Mark Ringgenberg and Dustin Schwarze. The circumstances of Clark's death are highly disputed. Officers claim that Clark was trying to grab an officer's gun when he was shot<sup>6</sup>, while witnesses say Clark was handcuffed when police shot him.<sup>7</sup> Following the shooting, both officers were placed on paid administrative leave. Since the incident, activists have demanded that the police release the video of the shooting. No police dashcam or bodycam videos of the incident have been released as of the writing of this report. Protests followed Clark's death and 51 demonstrators were arrested.<sup>8</sup> On March 30, 2016 Hennepin County attorney, Mike Freeman, announced that his office would not be pressing charges against officers Ringgenberg or Schwarze.<sup>9</sup> The report issued by the Hennepin County Attorney's Office concluded that Clark had not been handcuffed at the time he was shot; that DNA evidence established Clark had grabbed officer Ringgenberg's holster and gun; that under the

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<sup>3</sup> U.S. Department of Justice, Office of Community Oriented Policing Services, *The President's Task Force on 21<sup>st</sup> Century Policing: One-Year Progress Report*, 2016.

<sup>4</sup> State of Minnesota, Supreme Court Task Force, *Force on Racial Bias in the Judicial System*, 1993.

<sup>5</sup> Institute on Race and Poverty and Council on Crime and Justice, *Minnesota Statewide Racial Profiling Report: All Participating Jurisdictions*, Report to the Minnesota Legislature, 2003  
<http://static.prisonpolicy.org/scans/ccj/Racial%20Profiling%20Study.pdf>.

<sup>6</sup> Tim Nelson, *Conflicting Accounts: What Happened the Night Jamar Clark Was Shot*, Minnesota Public Radio News, 2015, <http://www.mprnews.org/story/2015/12/04/jamarclark-shooting-what-happened> (last accessed Oct.10, 2016).

<sup>7</sup> MPR News Staff, *Police Union Chief: Jamar Clark Wasn't Cuffed, Went For Officer's Gun*, Minnesota Public Radio News, 2015, <http://www.mprnews.org/story/2015/11/18/bca-names-officers> (Last accessed Oct.10, 2016).

<sup>8</sup> David A Graham, *How Did Jamar Clark Die*, The Atlantic, 2015,  
<http://www.theatlantic.com/politics/archive/2015/11/jamar-clark-is-the-next-great-police-brutality-controversy/416418/> (last accessed, Oct. 10, 2016).

<sup>9</sup> Hennepin Attorney, *Freeman declines charges in Clark shooting*, 2016  
<http://www.hennepinattorney.org/news/news/2016/March/jamar-clark-decision> (Last accessed Nov. 4, 2016).

circumstances of the incident, the officers' use of deadly force was legally authorized; and that for these reasons, criminal charges were not warranted against the officers. After launching its own investigation into Clark's death, the Department of Justice also declined to press criminal charges against the officers, stating that there was "insufficient evidence to support federal criminal civil rights charges against the Minneapolis Police Department."<sup>10</sup> The Department of Justice concurred with the Hennepin County Attorney's Office "that the evidence suggests that Clark was not handcuffed during the incident" and concluded, based on DNA evidence, that it was "impossible to disprove [the officer's] claim that Clark grabbed [the officer's] gun."<sup>11</sup> On October 21, 2016, Minneapolis Police Chief Janeé Harteau announced that the Minneapolis Police Department had conducted an internal investigation into the circumstances surrounding Clark's death and concluded that there were no violations of MPD policy.<sup>12</sup>

Following Clark's death, another black male, Philando Castile, was fatally shot by Jeronimo Yanez, a Latino officer with the St. Anthony Police Department, during a traffic stop on July 6, 2016. The incident attracted extensive media attention after Castile's girlfriend, Diamond Reynolds, posted a Facebook Live video showing the aftermath of the shooting. The video, which begins just after the shooting and shows Castile slumped over in the front seat of the car, his clothing covered in blood, touched off a series of state and nationwide protests. At one protest in St. Paul, clashes between police and protestors resulted in injuries to 21 officers and the arrest of 102 protestors.<sup>13</sup>

After reviewing the results of the Minnesota Bureau of Criminal Apprehension's investigation into the shooting, Ramsey County Attorney John Choi elected to charge with one count of second degree manslaughter in the death of Castile, as well as two counts of dangerous discharge of a firearm – one for endangering the life of Ms. Reynolds, who was seated in the front passenger seat at the time of the shooting, and one for endangering the life of Castile's four year old daughter, who was seated in the back seat. It is believed to be the first time in Minnesota history that an officer has been charged in an on-duty fatal shooting.<sup>14</sup>

At trial, both sides presented differing accounts of the moments leading up to Castile's death. According to the prosecution's version of events, Castile, after calmly informing Yanez that he

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<sup>10</sup> U.S. Department of Justice, Office of Public Affairs, *Federal Officials Decline Prosecution in the Death of Jamar Clark*, 2016, <https://www.justice.gov/opa/pr/federal-officials-decline-prosecution-death-jamar-clark> (Last accessed Nov. 4, 2016).

<sup>11</sup> *Id.*

<sup>12</sup> MPR News Staff, *Mpls. Police: Internal probe clears cops in Jamar Clark shooting*, MPR News, Oct. 21, 2016, <https://www.mprnews.org/story/2016/10/21/jamar-clark-minneapolis-police-shooting-internal-investigation> (Last Accessed, Nov 4, 2016).

<sup>13</sup> Mara Gottfried et al., *After weekend violence, Philando Castile's family calls for calm*, Twin Cities: Pioneer Press, Jul. 9, 2016, <http://www.twincities.com/2016/07/09/amid-racial-strife-hundreds-look-for-answers-in-protests-church-service/> (last accessed Oct. 10, 2016).

<sup>14</sup> Mitch Smith, *Minnesota Officer Acquitted in Killing of Philando Castile*, New York Times, June 16, 2017, <https://www.nytimes.com/2017/06/16/us/police-shooting-trial-philando-castile.html> (Last accessed December 21, 2017).

had a firearm in the vehicle, began reaching for his identification – which Yanez had requested – at which point Yanez panicked, drew his weapon, and fired seven shots into the vehicle, hitting Castile multiple times. The defense, on the other hand, claimed that Yanez told Castile not to reach for his firearm, but that Castile was high on Marijuana at the time and too “stoned” to follow Yanez’s orders, placing Yanez in fear for his life. After five days of deliberations, the jury – which included two black jurors – acquitted Yanez on all counts.<sup>15</sup> The acquittal sparked another round of protests in Minnesota, with as many as 2,000 protestors gathering at the capitol building in St. Paul before beginning an impromptu march through the city.

The most recent controversial police shooting in Minneapolis occurred on Saturday evening, July 15. The incident remains under investigation, but media reports and limited official statements have substantiated that Minneapolis police officer Mohamed Noor, a Somali-American, shot and killed a white woman from Australia, Justine Ruszczyk, after Ruszczyk had twice called 911 at to report a potential sexual assault occurring in the alley behind her home in southwest Minneapolis. After the 911 calls, Officer Noor and his partner, Matthew Harrity arrived at the scene in their squad car. Officer Noor has refused to cooperate with or speak with investigators about the incident. However, Harrity, who was driving squad car, with Noor in the passenger’s seat, has cooperated with the investigation. Officer Harrity’s reported statements have been to the effect that he was driving the squad car through the alley where the suspect activity had been reported; that he heard a loud noise as the vehicle reached the end of the alley; that immediately afterwards, he saw Ruszczyk approaching his side of the car; and that Noor then fired his gun across Harrity, through the driver’s side window, striking Ruszczyk in the abdomen. Dressed in pajamas and unarmed, Ruszczyk had only her cell phone with her. Officers and paramedics performed CPR, but Ruszczyk was pronounced dead on the scene twenty minutes after the shooting.

The shooting of Ruszczyk culminated in the decision of Minneapolis Mayor Betsy Hodges’s to ask on July 21, 2017 for the resignation of Minneapolis Police Chief Janee Harteau, which Harteau tendered on the same day.

Along with police shootings, communities of color have testified of being negatively impacted by other instances of police misconduct. In 2010, there was a class-action lawsuit against the Metro Gang Strike Force. This was a multi-jurisdictional police task force commissioned to fight drug trade and violent crime throughout the state. An investigation revealed that since its inception in 1997, officers were improperly seizing money and property, and often brutalizing innocent victims, many of whom were people of color. The lawsuit resulted in a \$3 million

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<sup>15</sup> Mitch Smith, *Minnesota Officer Acquitted in Killing of Philando Castile*, New York Times, June 16, 2017, <https://www.nytimes.com/2017/06/16/us/police-shooting-trial-philando-castile.html> (Last accessed December 21, 2017).

settlement; nearly \$1.5 million was allocated to racial sensitivity training for officers, but six years later this training has yet to be implemented.<sup>16</sup>

Between 2006 and 2012 in Minneapolis, the city paid out \$14 million for alleged police misconduct, though very few of these cases resulted in disciplinary action for officers.<sup>17</sup> In the hope of improving the transparency of investigations, in 2012, the Office of Police Conduct Review (OPCR) was created to replace the Civilian Review Authority (CRA).<sup>18</sup> According to reports, members of CRA felt their effectiveness was limited, with police leadership often ignoring their rulings and recommendations.<sup>19</sup> In response to these concerns, The OPCR now sends complaints to be evaluated by a joint supervisor team comprised of the Director of the Office of Police Conduct Review and the Commander of Internal Affairs. Proponents of this change believe incorporating law enforcement will improve collaboration and effectiveness, while critics argue that the OPCR does not do enough to address the problems that plagued the CRA.<sup>20</sup> Based on the OPCR's own data, concerns about the effectiveness of the OPCR appear to be well founded: of the first 439 complaints filed with the OPCR, not a single one resulted in disciplinary action for the accused officer.<sup>21</sup> A majority of the complainants were from African Americans.<sup>22</sup> However, despite its refusal to bring disciplinary action against officers, the OPCR has made attempts to address police transparency and accountability in other ways. On October 11, 2016, the OPCR and the City of Minneapolis launched an online portal that allows anyone to look up data on police misconduct cases.<sup>23</sup>

In addition to instances of police misconduct and use of force, arrest data from the Minneapolis Police Department suggests a disparate impact in enforcement of low-level offenses against people of color.<sup>24</sup> Of the approximately 96,975 arrests for low-level offenses made by Minneapolis police officers between January 1, 2012 and September 30, 2014, blacks accounted

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<sup>16</sup> State of Minnesota, Department of Public Safety, *Report of the Metro Gang Strike Force Review Panel*. 2009.

<sup>17</sup> Alejandra Matos & Randy Furst, *Minneapolis cops rarely disciplined in big-payout cases*, *Star Tribune*, June 3, 2013, <http://www.startribune.com/minneapolis-cops-rarely-disciplined-in-big-payout-cases/209811991/> (last accessed Oct. 10, 2016).

<sup>18</sup> Brant Williams, *Minneapolis City Council shines light on police Civilian Review Authority*, *MPR News*, Jul. 25, 2012, <http://www.mprnews.org/story/2012/07/25/law/minneapolis-police-civilian-review-authority> (last accessed Oct 10, 2016), [hereinafter cited as *Minneapolis City Council shines light on police Civilian Review Authority*].

<sup>19</sup> Matt McKinney, *New Minneapolis cop review panel under fire*, *Star Tribune*, Oct. 10, 2013, <http://www.startribune.com/new-minneapolis-cop-review-panel-under-fire/227153271/> (last accessed October 10, 2016).

<sup>20</sup> *Minneapolis City Council shines light on police Civilian Review Authority*

<sup>21</sup> Randy Furst, *No Minneapolis cops have been disciplined after 439 complaints*, *Star Tribune*, Aug. 28, 2013, <http://www.startribune.com/no-minneapolis-cops-have-been-disciplined-after-439-complaints/221422101/> (last accessed Oct. 10, 2016).

<sup>22</sup> City of Minneapolis, Department of Civil Rights, Office of Police Conduct Review, *Reports: Demographics*, <http://www.minneapolismn.gov/civilrights/policeconductreview/archive/index.htm>.

<sup>23</sup> Associated Press, *Online portal allows public access to Minneapolis police conduct data*, *Twin Cities: Pioneer Press*, Oct. 13, 2016, <http://www.twincities.com/2016/10/13/online-portal-allows-public-access-to-minneapolis-police-conduct-data/> (last accessed Oct. 17, 2016).

<sup>24</sup> ACLU, *Picking up the Pieces: A Minneapolis Case Study*, <https://www.aclu.org/issues/racial-justice/race-and-criminal-justice/picking-pieces>. (last accessed Dec. 13, 2017).

for 59%, despite representing only 19% of the city's population.<sup>25</sup> In Minneapolis, black youth are arrested for low level offenses at a rate nearly six times that of white youth, and blacks in general are 8.7 times more likely to be arrested for low-level offenses than whites.<sup>26</sup> Native Americans are arrested for low-level offenses at similarly high rates, with Native American youth 7.7 times as likely to be arrested for low-level offenses as white youth.<sup>27</sup> Some have argued that these disparities are at least partially the result of implicit bias and racial profiling on the part of Minneapolis police officers.<sup>28</sup> During the afternoon hours – when police officers are best able to identify an individual's race before stopping their vehicle– black drivers in Minneapolis are over 9 times more likely to be arrested for a traffic violation than white drivers.<sup>29</sup> Conversely, during the late evening and early morning hours – when visibility is limited – black drivers are only twice as likely to be arrested for a traffic violation as white drivers.<sup>30</sup>

Selective enforcement of nonviolent offenses contributes to higher rates of incarceration for members of marginalized communities.<sup>31</sup> Statewide, blacks represent 6% of the population, yet as of January 2016 they made up 35% of the state's prison population. For Native Americans, the disparity is even starker: Despite making up only 1% of the population, Native Americans account for 10% of the state's prison population.<sup>32</sup> Homeless people are also arrested for low level offenses at disproportionately high rates, often for offenses – such as public urination, open bottle, and panhandling — that are inextricably related to not having a home.<sup>33</sup>

Some communities are beginning to take action in response to these concerns. Minneapolis is one of six pilot locations working with the National Initiative for Building Community Trust & Justice.<sup>34</sup> The National Initiative is working in conjunction with the U.S. Department of Justice, the National Network for Safe Communities at John Jay College of Criminal Justice, Justice Collaboratory at Yale Law School, the Center for Policing Equity at John Jay College and UCLA, and the Urban Institute to explore issues of trust between the criminal justice system and communities of color. This initiative attempts to improve trust by enhancing procedural justice, reducing implicit bias, and fostering reconciliation.

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<sup>25</sup> *Id.*

<sup>26</sup> ACLU, *Picking up the Pieces: A Minneapolis Case Study*, <https://www.aclu.org/issues/racial-justice/race-and-criminal-justice/picking-pieces> (last accessed Dec. 13, 2017)..

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* See also: Michelle Alexander, *The New Jim Crow*, *The New Press* (2012).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> National Initiative for Building Community Trust & Justice, *Minneapolis: 2016 Status Report*, 2016, [https://s3.trustandjustice.org/misc/National\\_Initiative\\_-\\_2016\\_Status\\_Report\\_-\\_Minneapolis.pdf](https://s3.trustandjustice.org/misc/National_Initiative_-_2016_Status_Report_-_Minneapolis.pdf) (Last Accessed Nov. 4, 2016).

Against this background, the Committee seeks to examine disparate policing practices in Minnesota, a process which may include investigating one or more of the following:

- What is the state of police and community relations in Minnesota, especially in communities of color? Does this differ significantly from police relations in white communities?
- What are current policing practices in Minnesota, and how do they differ or align with The President’s Task Force on 21<sup>st</sup> Century Policing recommendations?
- To what extent are Task Force’s recommendations being implemented in Minnesota? Specifically, to what extent are implicit bias training, procedural justice training, data collection, and transparency being implemented?
- What impact do these recommendations have on disparate policing practices?
- What barriers are preventing the implementation of these recommendations?
- To what extent do these recommendations, when/if implemented, substantially improve disparities in policing practices in Minnesota? To what extent might they substantially improve police and community relations?
- What other factors may be contributing to policing disparities and impacting community/police relations in communities of color in Minnesota?

The Committee seeks to address these concerns as they pertain to police practices in the Minneapolis-St. Paul area and throughout the State of Minnesota. To that end, the Committee’s study may include a review of policing practices in metropolitan, suburban, and rural communities, particularly where significant Black, Latino, Native American, Muslim, and new immigrant and refugee populations – including Hmong, Cambodian, and Tibetan communities, among others – reside.

## **IV. SUMMARY OF PANEL TESTIMONY**

### **A. Pillar 1: Building Trust & Legitimacy**

The Final Report of the President’s Task Force on 21<sup>st</sup> Century Policing begins by noting that trust between law and enforcement and the community is the “foundational principle” of safe, effective policing. The Committee heard testimony from both civilians and police on the origins and consequences of eroded trust between law enforcement and the community.

**1. Historical Trauma**

One recommendation put forth by the Task Force was the need for law enforcement agencies to “acknowledge the role of policing in past and present injustice and discrimination and how it is a hurdle to the promotion of community trust.”<sup>35</sup> Panelists offered extensive testimony about the relevance of historical trauma in communities of color and the impediment it poses to the development of trusting relationships with law enforcement. Panelists highlighted the origins of law enforcement in slave patrols and the violent and repressive police tactics of the Jim Crow era as having contributed to historical trauma among communities of color.<sup>36</sup> There was also testimony indicating that even among individuals too young to have experienced these practices first hand, historical trauma remains an issue. Dr. Ebony Ruhland with the Robina Institute suggested that many younger people of color inherit a deep distrust of law enforcement stemming from the experiences of their parents and grandparents. In this way, said Dr. Ruhland, historical trauma is often passed from generation to generation.

Dr. Jason Sole of the NAACP suggested that this distrust is not simply due to historical trauma, referring to the possibility that officers in uniform today may be directly related to slave owners or Jim Crow era law enforcement officials.<sup>37</sup> Dr. Sole related how, in 2016, the Duluth chief of police acknowledged his familial connection to a woman who lied about being raped and assaulted by 3 African American men in 1920, resulting in their public lynching by a mob of thousands of white Minnesotans.<sup>38</sup> According to Dr. Sole, stories like this and others show the importance of tracing officers’ genealogy during the training and hiring process, as well as remaining thoughtful about how such historical connections impact community trust.<sup>39</sup> Mark Kappelhoff, former Deputy Assistant Attorney General of the Civil Rights Division of the Department of Justice, quoted William Bratton at the National Organization of Black Law Enforcement when he said, “None of us were troopers on the bridge at Selma. But it doesn’t matter that these things happened before many of us were even born. What matters is that our history follows us like a second shadow. We can never underestimate the impact these had.”<sup>40</sup> Many panelists expressed the belief that, in order to increase trust between communities of color and the police, officers must first be willing to acknowledge the role that historical trauma continues to play in informing how people of color view law enforcement personnel.<sup>41</sup>

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<sup>35</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 12.

<sup>36</sup> Transcript of the briefing before the U.S. Commission on Civil Rights Minnesota State Advisory Committee, *Civil Rights and Police Practices in Minnesota*, Mar. 21, 2017 (statement by Dr. Tracie Keese) at 20; (statement by Dr. Ebony Ruhland) at 57; (statement by Dave Bicking) at 348, [https://www.facadatabase.gov/download.aspx?fn=Meetings/2017-275-147726\\_transcript\\_\(2017-04-27-03-06-59\).pdf](https://www.facadatabase.gov/download.aspx?fn=Meetings/2017-275-147726_transcript_(2017-04-27-03-06-59).pdf) [hereinafter cited as Transcript].

<sup>37</sup> Transcript (statement by Jason Sole of NAACP) at 157.

<sup>38</sup> *Id.* at 157;158.

<sup>39</sup> *Id.* at 158.

<sup>40</sup> Transcript (statement by Mark Kappelhoff) at 304.

<sup>41</sup> Transcript (statement by Keese) at 22; (statement by Ruhland) at 57.

## 2. *Police and Community Distrust*

The Task Force emphasizes the importance of developing trust on both sides of the officer-community divide.<sup>42</sup> Dave Bicking of Communities Against Police Brutality pointed out, “A lack of trust doesn’t just come from historical police behaviors; lack of trust is a rational response to current police practices.”<sup>43</sup> This perspective was shared by many of the panelists and community members present at the hearing. Dr. Ruhland recalled a recent conversation in which a member of the community asked her, “How do you build trust with somebody who already has preconceived ideas of who you are? That you are less than a person, that you don’t deserve justice, that you don’t deserve equal rights?”<sup>44</sup>

Several panelists indicated that the police’s failure to protect protestors during the mass demonstrations that took place following the deaths of Jamar Clark and Philando Castile has contributed to community distrust of law enforcement.<sup>45</sup> Testimony referred specifically to a Black Lives Matter protest in northern Minneapolis in which five protestors were shot by a white supremacist.<sup>46</sup> Leslie Redmond, a law student at the University of St. Thomas in Minnesota and Black Lives Matter activist, testified that “when the gunman showed up. . .the police did not run to our defense. . .they came swarming from the other area and ended up macing the protestors.”<sup>47</sup> Dr. Sole suggested that, despite claims to the contrary, the police’s response to the shooting – attacking the protestors rather than trying to apprehend the shooter – was not merely a mistake or the result of inadequate training, but rather reflective of the fact that many of the officers present the night of the shooting were more sympathetic to the views of the shooter than those of the protestors. In support of this claim, Dr. Sole noted that following the attack, the shooter immediately called a friend who was an officer with the Mankato Police Department, and it was later revealed that the two men had a history of sharing racially insensitive text messages with each other.<sup>48</sup> For Dr. Sole, this story raises a number of disturbing questions not only about what happened the night of the shooting, but about the state of policing in Minnesota in general: “Why would you [the officer] have a friendship with someone who you know is a white supremacist? Why? I think it’s very telling.”<sup>49</sup>

Other panelists traced the source of eroding trust between community members and law enforcement to dissatisfaction with how police respond to emergency calls in poor and marginalized communities. Many people living in these communities complain that it takes too

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<sup>42</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 1.

<sup>43</sup> Transcript (statement by Bicking) at 344.

<sup>44</sup> Transcript (statement by Ruhland) at 61.

<sup>45</sup> Transcript (statement by Sole) at 165; (statement by Leslie Redmond, a D.C. Native) at 192.

<sup>46</sup> Mark Vancleave. *Five people were shot near Black Lives Matter protest site*, Star Tribune, Nov. 24, 2015, <http://www.startribune.com/several-people-were-shot-near-black-lives-matter-protest-site/353121881/> (last accessed May 5, 2017).

<sup>47</sup> Transcript (statement by Redmond) at 193.

<sup>48</sup> Transcript (statement by Sole) at 166.

<sup>49</sup> *Id.* at 166.

long for police to respond to 911 calls, with officers often arriving after the emergency is already over.<sup>50</sup> Dr. Ruhland discussed how slow police response times can lead individuals to take justice into their own hands rather than wait for the police to arrive, thereby creating more crime and further endangering public safety.<sup>51</sup> Recalling a conversation she had recently with a woman who was a victim of domestic violence, Dr. Ruhland testified that the woman asked her, “Why would I call the police if the police are not going to show up? . . . I would prefer to call my cousin, who might come over here with his gun, but my cousin is going to handle the situation in short order, and that’s street justice.”<sup>52</sup> Even in areas of the city where the police do respond quickly, many people of color remain hesitant to report an emergency, out of the fear that the police will harass them or treat them like criminals. According to Dr. Ruhland, community members living in high crime neighborhoods reported general wariness about contacting the police, quoting community members, “when you call the police, they don’t know if you’re going to be seen as the perpetrator... I don’t trust that if I call them, I’m not going to be the one slammed down and being treated like a criminal.”<sup>53</sup> Similarly, community members indicated police often would never respond to their calls and when they did ultimately respond, it took considerable time for units to arrive.<sup>54</sup>

The lack of trust between communities of color and law enforcement is particularly troubling given that these communities are often the ones most in need of effective policing. Dr. Ruhland testified that, in her experience, these communities, “want and often need a police presence... They often mention that in high crime areas, they can’t walk to walk to the park. They don’t feel safe walking to the park. They don’t feel safe walking to the stores. So they want a police presence. What they don’t want is the tactics that the police are currently using.”<sup>55</sup> Barbara Johnson, the president of the Minneapolis City Council, shared the story of a woman in her district whose home had recently been shot at during a drive-by shooting. Despite being scared and concerned for the safety of her children, the woman was hesitant to go the police, because when she was 13 years old a police officer accused her of a crime she did not commit, an experience that she says makes it difficult for her to trust police officers to this day. For Ms. Johnson, this story illustrates the degree of distrust between communities of color and law enforcement, as well as the detrimental effect that this distrust can have on public safety. Referring to the woman’s prior negative experiences with law enforcement, Ms. Johnson described how, “in the back of her mind that’s what she is dealing with when calling the police to respond this house where this very, very serious incident, where this bullet came into her children’s bedroom and through the plaster, and got sheetrock dust on them it was so close.”<sup>56</sup> Ms. Johnson suggested that one way to bridge the divide between the community and law

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<sup>50</sup> Transcript (statement by Ruhland) at 58-59.

<sup>51</sup> *Id.* at 58-60.

<sup>52</sup> *Id.* at 65; 54.

<sup>53</sup> *Id.* at 60.

<sup>54</sup> *Id.*.

<sup>55</sup> *Id.* at 65.

<sup>56</sup> Transcript (statement by Barbara Johnson) at 314.

enforcement is to listen to people like the woman in this story, in order to find out where their distrust of law enforcement comes from and what can be done to remedy it.

Sheriff Stuart acknowledged that, “without the public’s trust, there is little value to the service that we provided,” a sentiment that was echoed by other law enforcement officials.<sup>57</sup> However, there was also testimony indicating that the lack of trust goes both ways and that many Minnesota police officers are distrustful of the communities they are assigned to protect. Dr. Ruhland stated, “We found that police often have a fear of the community as well, and often there is a lack of---or a distrust among the community.”<sup>58</sup> Testimony by law enforcement personnel tended to support this conclusion. Several officers expressed skepticism regarding the veracity of excessive force complaints and indicated that they believe the media and members of the community often concoct false narratives aimed at discrediting police officers. For example, Lt. Bob Kroll, the President of the Police Officer’s Federation of Minneapolis testified that, “of course we had the Eric Garner situation, he said he couldn’t breathe 11 times. Now you can’t breathe, you can’t say you can’t breathe, particularly 11 times. It was a false narrative.”<sup>59</sup> While asthma, heart disease, and obesity were contributing factors to the death of Eric Garner, according to the New York City medical examiner, *the cause* of Eric Garner’s death was “homicide”, identifying “the compression of [Garner’s] chest and prone positioning during physical restraint by police” as the reason for his death.<sup>60</sup> This testimony indicates community distrust by the police, highlighting a rift between community and law-enforcement perspective and trust. When asked about the importance of police complaints, Sheriff Stuart said:

What is especially beneficial for us to understand, is that someone might file a claim because they got a ticket, they got stopped, they didn’t like that they were inconvenienced. So they want to create a hardship for that officer who created what they deem to be a hardship against them. What we find more often than not is when we say, ‘well we will review the tape, we’ll review the camera,’ they say, ‘Oh, it’s recorded, never mind.’ And so just for perspective there are oftentimes a fair number of people that make things up against officers just to try and have a little payback.<sup>61</sup>

Again, this testimony indicates that law enforcement has a profound distrust of community members, which likely impedes trust and relationship building.

### **3. Procedural Justice**

Procedural justice is central to building trust between communities and law enforcement. Research indicates that individuals perceive justice as being tied to fairness of treatment rather

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<sup>57</sup> Transcript (statement by Sheriff James Stuart of Anoka County) at 215.

<sup>58</sup> Transcript (statement by Ruhland) at 61.

<sup>59</sup> Transcript (statement by Lieutenant Bob Kroll of the Minneapolis Police Department) at 212.

<sup>60</sup> The Editorial Board, *It Wasn’t Just the Chokehold*, The NY Times, Dec.4, 2014, <https://www.nytimes.com/2014/12/05/opinion/eric-garner-daniel-pantaleo-and-lethal-police-tactics.html>.

<sup>61</sup> Transcript (statement by Stuart) at 232.

than fairness of outcomes.<sup>62</sup> The Task Force describes procedural justice in the following way, “Decades of research and practice support the premise that people are more likely to obey the law when they believe that those who are enforcing it have the authority that is perceived as legitimate by those subject to the authority. The public confers legitimacy only on those whom they believe are acting in procedurally just ways.”<sup>63</sup> Procedurally just behavior is based on four central principles: 1) Treating people with dignity and respect 2) Giving individuals “voice” during encounters 3) Being neutral and transparent in decision making 4) Conveying trustworthy motives.<sup>64</sup>

Dr. Porter noted that a focus on procedural justice has historically been a key component of effective policing, and testimony from other panelists emphasized its continuing importance in building trust between communities of color and law enforcement. Dr. Tracie Keese the Deputy Commissioner of Training for the NYPD indicated that when “officers take their time and explain what they’re doing and allow people they come in contact with to express their experience and what is happening with them we find we have a reduction of use of force and we also have higher satisfaction.”<sup>65</sup> Similarly, Mr. Kappelhoff indicated that “whenever people see or experience things that sap their confidence in the fairness of the process of our justice system, the effects can be corrosive. People are less willing to cooperate with law enforcement, less willing to abide by the law, less willing to view the law and those enforce it, as legitimate.”<sup>66</sup>

Ms. Johnson discussed the important role that language can play in improving community-police relations. A recent study of police practices in Oakland, California suggests that police officers there are more likely to use disrespectful and demeaning language when speaking to people of color. Although this study focused exclusively on police practices in Oakland, Ms. Johnson expressed concern that officers in Minnesota are engaging in similar behavior. According to Ms. Johnson, “one of the most common complaints when people meet and complain to our review committees is language. And that is so important for people to be treated respectfully and using appropriate language. You know, in all interactions that any city has with people but particularly police.”<sup>67</sup>

Ben Feist from the ACLU indicated that the Minneapolis Police Department was embracing the validity of procedural justice and incorporating this method into training efforts.<sup>68</sup> Chief Janee Harteau of the Minneapolis Police Department confirmed this and indicated multiple sustainability efforts including “ambassadors” that train procedural justice on a continuing basis both internally and in the community.<sup>69</sup> Many officers from different counties confirmed that

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<sup>62</sup> Transcript (statement by Kappelhoff) at 305.

<sup>63</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 1.

<sup>64</sup> *Id.* at 10.

<sup>65</sup> Transcript (statement by Keese) at 23-24.

<sup>66</sup> Transcript (statement by Kappelhoff) at 305- 306.

<sup>67</sup> Transcript (statement by Johnson) at 327.

<sup>68</sup> Transcript (statement by Benjamin Feist) at 89.

<sup>69</sup> Transcript (statement by Janee Harteau) 199.

procedural justice is part of their training, however it is not mandated in officer training across the state. Efforts by these departments can serve as examples for state or national standards, but without these standards, procedural justice will likely continue to be implemented in a piecemeal fashion. One barrier to implementation suggested by Dr. Gene Borgida of the University of Minnesota School of Law and Department of Psychology was that procedural justice “isn’t an idea that’s a one size fits all. There are a lot of cultural differences that are associated with procedural justice. Different communities of color have, you know, different orientations to what constitutes procedural justice and how you establish trust and there has to be some cultural sensitivity.”<sup>70</sup> Another obstacle to implementation is lack of funding for training. Mr. Feist highlighted that House File 346 and Senate File 445 are intended to increase funding for police departments across the state, specifically for training, however neither bill mentions procedural justice or implicit bias training in mandatory trainings.<sup>71</sup>

The Task Force recommends law enforcement culture to “embrace a guardian mindset to build public trust and legitimacy” rather than a warrior mindset “seen as an occupying force coming in from outside to rule and control the community.”<sup>72</sup> Ms. Emily Baxter with the organization We Are All Criminals, provided testimony regarding moments of leniency in which officers released citizens with a warning rather than a punishment.<sup>73</sup> She pointed out that these discretionary decisions were often due to some privileged element of the identity of the criminal, but that this leniency should be the guiding model for procedural justice and the guardian mindset.<sup>74</sup> Chief Todd Axtell of the St. Paul Police Department testified that his officers consider themselves guardians and reiterated the importance of embracing this mindset.<sup>75</sup>

There was some evidence that not all officers subscribe to the “guardian versus warrior” philosophy. Lt. Kroll indicated, “All of our officers are looking for immediate compliance and questions after the fact.”<sup>76</sup> When Lt. Kroll was asked to a statement he had made to the ACLU indicating that he “viewed policing and complaints like you view a basketball game, in that if you’re not getting any fouls you aren’t playing hard enough” Lt. Kroll clarified by saying,

What I mean by that is we’re paying officers a fair wage and you should get productive work out of that. Show me an officer that has never had a complaint in 30 years and I’ll show you an officer, what we call in the department a low-level slug, an officer that doesn’t do anything. If you show me an officer that has a lot of investigations and all of them turned out to be false, and I’ve been that officer on the witness stand, when the numbers come in and lawsuits and things like that; when you’re making 8 times the contact with citizens and you’re making 21 times

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<sup>70</sup> Transcript (statement by Dr. Eugene Borgida) at 337.

<sup>71</sup> Transcript (statement by Feist) at 90-91.

<sup>72</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 11.

<sup>73</sup> Transcript (statement by Emily Baxter) at 34-35; 76-77.

<sup>74</sup> *Id.*

<sup>75</sup> Transcript (statement by Chief Todd Axtell) at 53.

<sup>76</sup> Transcript (statement by Kroll) at 212.

the arrest than your counterparts, you're going to get complaints. By and large in our crew the officer that doesn't get those complaints doesn't get out and investigate anything. And that's not what we're paying our offices to do.<sup>77</sup>

Chief Harteau disagreed saying, "It's not as simple as saying you have to have multiple complaints if you work hard. I would say that's inaccurate, that's a very false statement."<sup>78</sup> Chief Axtell provided similar testimony, "The warrior mentality, I believe, over the years has been more prevalent. That has led us up to where we are today, the mentality of not all but very few officers that paint, again, the broad brush of, I'm the police officer. I'm telling you. This is what you're going to do, and you're going to do what I tell you to do. That type of approach never works. It absolutely doesn't work. So when we have those officers that engage in that type of approach that diminishes the trust that we have with all of our communities."<sup>79</sup> The apparent uncertainty, even among police officers, as to whether they are guardians or warriors may contribute to issues of trust and relationship building between police and the community.

While the divide between the perspectives of law enforcement and the community was obvious in the testimony, the divide between police leadership and rank and file officers was also noticeable. Documentation of this tension exists throughout the country.<sup>80</sup> This disconnect came to a head when Police Executive Research Forum (PERF) a police think tank created "30 Guiding Principles" addressing police use of force including a "sanctity of life" clause encouraging officers to avoid conflict whenever possible.<sup>81</sup> Police Unions in particular challenged this orientation suggesting any hesitation may endanger police officers. The Committee heard similar disconnect between police administration and rank and file officers. Without unity within the departments it is hard to imagine cohesion between the police and the communities they serve.

#### **4. *Implicit Bias***

Procedural Justice is based on the understanding that, "All human beings have biases or prejudices as a result of their experiences and these biases influence how they might react when dealing with unfamiliar people or situations."<sup>82</sup> According to Dr. Borgida, "There is very little debate about the existence of subtle bias. Social scientist have documented this now for 40 years."<sup>83</sup> Borgida also indicated that evidence demonstrates that this bias "is incredibly

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<sup>77</sup> Transcript (statement by Kroll) at 231.

<sup>78</sup> Transcript (statement by Harteau) at 232.

<sup>79</sup> Transcript (statement by Axtell) at 264.

<sup>80</sup> Tom Jackman, *Protocol for reducing police shootings draws backlash from unions, chiefs group*, The Washington Post, Mar. 2016, [https://www.washingtonpost.com/local/public-safety/move-to-reduce-police-shootings-draws-sharp-backlash-from-unions-chiefs-group/2016/03/30/03c81e6a-ec55-11e5-bc08-3e03a5b41910\\_story.html?utm\\_term=.2f0f021b057f](https://www.washingtonpost.com/local/public-safety/move-to-reduce-police-shootings-draws-sharp-backlash-from-unions-chiefs-group/2016/03/30/03c81e6a-ec55-11e5-bc08-3e03a5b41910_story.html?utm_term=.2f0f021b057f) (last accessed May 31, 2017).

<sup>81</sup> *Id.*

<sup>82</sup> Transcript (statement by Borgida) at 282- 283.

<sup>83</sup> *Id.* at 283.

damaging to police-community relations.”<sup>84</sup> Commenting on the ubiquity of bias, Mark Kappelhoff pointed out that individuals, “encounter it on the street with the police officer, through the criminal justice system, the prosecutor, all the way up and through the judge,”<sup>85</sup> evidenced by the disproportionate interaction with police by communities of color.

The Committee heard considerable testimony from community voices regarding personal impacts of implicit bias. Ms. Gloria Porter who worked as the recruiter for St. Thomas’ master’s in public safety and police leadership as well as a community partner for the State Patrol testified that “none of the contacts, none of the work that I’ve done with various agencies kept me from being stopped by the police.”<sup>86</sup> Ms. Porter outlined her ongoing interaction with police. She began by explaining that she was stopped:

by the police and cited for reckless driving, for changing lanes on the street to avoid someone coming the wrong way on the one way. The officer cited me, not the person going the wrong way on the one way. A week later in almost the exactly same spot I was stopped by another police car for having snow on my window, and as that encounter escalated there were comments made about my physical appearance. I was choked by one officer and kicked by another. Weeks later I was stopped on the same street by a police officer, well at least that time he was stopping me to let me know that I had a brake light out...as recently as December I was on the way to work and I was stopped by a Minneapolis police officer for having an air freshener hanging from my rear view mirror.<sup>87</sup>

Other community members complemented this testimony with stories of residents with limited-English proficiency having guns pulled on them or individuals being attacked by police canines for non-compliance.<sup>88</sup>

Emily Baxter spoke about the power of implicit bias to codify “false narratives and false dichotomies of us versus them, or clean v. criminal or good versus bad.”<sup>89</sup> Ms. Baxter juxtaposed the story of an 18 year old young man who stole a single bottle of beer and was charged with petty theft with the story of a 17 year old who broke into a local liquor distribution plant building to throw a party. The first young man is black and was denied entrance to a career as an officer, the second was a white young man and is currently the chief of police.<sup>90</sup> Ms. Baxter spent the last 5 years chronicling the stories of youth who were involved in similar nonviolent criminal activity. In story after story, the white youth were given a warning, or another opportunity to correct their behavior. The youth of color were not. The only difference between these

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<sup>84</sup> *Id.* at 283.

<sup>85</sup> Transcript (statement by Kappelhoff) at 333.

<sup>86</sup> Transcript (statement by Louis Porter) at 347- 348.

<sup>87</sup> *Id.* at 349.

<sup>88</sup> Transcript (statement by Bicking) at 364-365; (statement by Linda Herman) at 367; 365.

<sup>89</sup> Transcript (statement by Baxter) at 38.

<sup>90</sup> *Id.* at 30-32.

individuals was race which she argues, “provided [the white youth] with a shield of humanity.”<sup>91</sup> She argued, “Once we’ve identified that bias, we can work toward empathizing with one another.”<sup>92</sup>

Some of the law enforcement representatives who provided testimony were attuned to the research and social scientific consensus that each person possesses biases while others were more skeptical. Chief Axtell stated, “to be human is to accept, we possess implicit bias. We’re getting better in law enforcement at recognizing that regardless of where we come from or what we look like, we all come from beliefs and in law enforcement we need to continue to acknowledge that.”<sup>93</sup> However, other officers did not feel that implicit bias impacted their work. Mr. Gallagher contended, “Although you will not get this from the media, or even some leaders of the communities we serve, the Minnesota officer does not care what color a person’s skin is, what religion they follow or where they live.”<sup>94</sup> The Committee heard testimony calling for more continuous and in-depth bias training.<sup>95</sup> Dr. Borgida emphasized how “deeply ingrained” implicit biases are and that persistent work is necessary to dismantle these biases.<sup>96</sup> Furthermore, Dr. Borgida articulated that there is some evidence to suggest that people must be engaged and willing to address these biases if transformation is to occur.<sup>97</sup>

## **5. Resident Officer Programs**

The Task Force suggests that one way to build community and police trust is through Resident Officer Programs.<sup>98</sup> Resident Officer Programs encourage officers to live in the neighborhoods they work by providing housing in said neighborhoods. The Task Force indicates that law enforcement agencies should provide incentives to officers to encourage them to live in the same neighborhoods that they work.<sup>99</sup>

This debate about whether officers should live where they work has been present throughout the country. Historically, both Minneapolis and St. Paul were able to impose residency requirements on local departments until 1999 when the governor signed into law a bill that banned residency requirements<sup>100</sup> According to MPR, only about 5.4% of Minneapolis officers live in Minneapolis and about 22% of St. Paul officers live in St. Paul, while the average for large cities in the United

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<sup>91</sup> Transcript (statement by Baxter) at 36,

<sup>92</sup> *Id.* at 38.

<sup>93</sup> Transcript (statement by Axtell) at 248.

<sup>94</sup> Transcript (statement by Michael Gallagher) at 244.

<sup>95</sup> Transcript (statement by Roxanne Anderson) at 180.

<sup>96</sup> Transcript (statement by Borgida) at 285

<sup>97</sup> *Id.* at 338.

<sup>98</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 15.

<sup>99</sup> *Id.*

<sup>100</sup> Jon Collins, *How many Twin Cities cops live where they work?*, MPR News, Mar. 20, 2015, <https://www.mprnews.org/story/2015/03/20/police-officer-residency> (last accessed May 5, 2017).

States is nearly 40% residency.<sup>101</sup> There are efforts being made to allow Minnesota jurisdictions to reintroduce this requirement in order to better connect with the communities they serve. However, reports indicate that local police unions are the strongest opposition to this proposal.<sup>102</sup>

Although police unions around the country have been staunchly opposed to residency requirements, advocates indicate these requirements improve police and community relations<sup>103</sup>. Ms. Johnson testified that she “grew up in the 1950’s, when fire fighters and police officers and all city employees actually had to live in the city. And it was a wonderful way to meet your neighbors and understand what different jobs people did...it created a sense of knowledge and neighborliness that is lacking today. And I think people really feel that...there is a disconnect between officers that live so far away.”<sup>104</sup> Dr. Ruhland suggested that police often view the community they are assigned to protect as a “warzone” or a degraded community, and she wondered whether their perspective would be different if they lived within the community.<sup>105</sup> Officer Ferraro indicated his vested interest in the betterment of St. Paul as a resident of the city and his ability to see the needs of the community in a more nuanced way because of this insider perspective.<sup>106</sup> Dr. Porter supported this recommendation by saying there should be, “strong residency requirements for police officers, mandating that they live in the communities they serve.”<sup>107</sup>

## **6. Force Diversity**

The Task Force also calls for law enforcement agencies to include a broad range of diversity to “improve understanding and effectiveness in dealing with all communities.”<sup>108</sup> Dr. Keesee indicated that diversity and inclusion efforts are central to police hiring practices.<sup>109</sup> Both Chief Axtell and Chief Harteau noted their departments’ commitment to increasing the diversity of their departments. Chief Harteau indicated, “I want diverse cops not just in ethnicity frankly, but in their view of the world.”<sup>110</sup> Both St. Paul and Minneapolis highlighted their improvements in diversity of police academy graduates. Chief Axtell indicated that “our first academy that started was back in December was 55 percent racial diversity”<sup>111</sup> and Chief Harteau stated that “one of our most recent graduation class, 40% was diverse.”<sup>112</sup>

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<sup>101</sup> Jon Collins, *How many Twin Cities cops live where they work?*, MPR News, Mar. 20, 2015, <https://www.mprnews.org/story/2015/03/20/police-officer-residency> (last accessed May 5, 2017).

<sup>102</sup> *Id.*

<sup>103</sup> Bob Nash, *Residency Requirements: Sometimes a Litigation Issue, More Often a Legislative One*, National FOP Research Section, <https://fop.net/CmsDocument/Doc/residency.pdf> (last accessed May 26, 2017).

<sup>104</sup> Transcript (statement by Johnson) at 317.

<sup>105</sup> Transcript (statement by Ruhland) at 63.

<sup>106</sup> Transcript (statement by Lou Ferraro) at 257.

<sup>107</sup> Transcript (statement by Porter) at 113.

<sup>108</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 16.

<sup>109</sup> Transcript (statement by Keesee) at 25.

<sup>110</sup> Transcript (statement by Harteau) at 205.

<sup>111</sup> Transcript (statement by Axtell) at 251.

<sup>112</sup> Transcript (statement by Harteau) at 206.

While a general increase in diversity aligns with the recommendations of the Task Force, some are critical that there are not enough African American officers. According to census data, in 2016 15.7% of St. Paul residents identify as Black or African American.<sup>113</sup> However, in 2016 the St. Paul Police Academy did not graduate a single African-American officer.<sup>114</sup> While these are important steps being made by the Minneapolis/St. Paul region, some questions remain regarding the transparency of the demographic breakdown of the police departments. In Minneapolis as of 2010, 18.6% of residents identified as Black or African American.<sup>115</sup> In 2016, only 6% of MPD officers are black.<sup>116</sup>

Law enforcement at the hearing and elsewhere cited a number of barriers to increasing diversity. Sheriff Stuart suggested that some of the difficulty in fielding more diverse police forces can be attributed to declining interest in pursuing careers in law enforcement. According to Sheriff Stuart, “as applicant numbers dwindle the challenge of broadening our desired diversity within our agencies also becomes more difficult.”<sup>117</sup> Other panelists attributed the challenge of recruiting diverse officers to perceptions of discrimination within the department.<sup>118</sup> Additionally, several panelists indicated that there are systemic barriers such as criminal histories<sup>119</sup> or costly qualifications<sup>120</sup> that dissuade particular groups.

There was also testimony regarding the need to recruit and hire more female police officers. Ms. Johnson testified to what she considers to be the troubling decline in the number of women entering law enforcement: “When I first came on the city council the number of women that would be in a rookie class that was being sworn in was much higher than it is right now, and that’s a big challenge I think for law enforcement in general. The chief has told me that is actually the trend across the country that there are fewer and fewer women going into law enforcement.”<sup>121</sup> With less women entering law enforcement, Ms. Johnson suggested that valuable insight into improving police practices is being lost, as female police officers “bring a special skill to some of the techniques that need to be used, the de-escalation, the thoughtful listening to people and respectful way that people are treated.”<sup>122</sup> To combat this problem, Ms. Johnson recommended that law enforcement agencies take steps – such as allowing officers to

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<sup>113</sup> United States Census Bureau, *American Fact Finder: St Paul City, Minnesota*, [https://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml?src=bkmk](https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk) (last accessed March 13, 2018).

<sup>114</sup> Mara H. Gottfried, *St. Paul’s newest officers are diverse, but no African-Americans in their ranks*, Twin Cities: Pioneer Press, Feb. 2, 2016, <http://www.twincities.com/2016/02/02/stpaul-police-department-diversity/> (last accessed May 31, 2017).

<sup>115</sup> United States Census Bureau, *QuickFacts: St Paul City, Minnesota*, <https://www.census.gov/quickfacts/table/RHI105210/2758000> (last accessed May 31, 2017).

<sup>116</sup> Libor Jany, *Minneapolis’ black police officers walk a cultural tightrope*, Star Tribune, Mar. 5, 2016, <http://www.startribune.com/minneapolis-black-police-officers-walk-a-cultural-tightrope/371135461/> (last accessed May 31, 2017).

<sup>117</sup> Transcript (statement by Stuart) at 220.

<sup>118</sup> *Id.* at 220; Libor Jany “Minneapolis’ black police officers walk a cultural tightrope.”

<sup>119</sup> Transcript (statement by Baxter) at 30.

<sup>120</sup> Transcript (statement by James Densley) at 43.

<sup>121</sup> Transcript (statement by Johnson) at 319.

<sup>122</sup> Transcript (statement by Johnson) at 319.

work more consistent hours – to make law enforcement a more appealing career choice for women.

## 7. *Trust with Immigrant Communities*

One of the Task Force’s recommendations is to build trust with immigrant communities and one aspect of this trust is to, “decouple federal immigration enforcement from routine local policing for civil enforcement and nonserious crime.”<sup>123</sup> It also recommends that the DOJ continue to refuse to accept information on civil immigration detainers. Under The Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA), Section 287(g) permitted federal government to collaborate with state and local law enforcement by deputizing select officers to enforce federal immigration law.<sup>124</sup> It was found that under 287 (g) some localities committed constitutional violations under this new authority including broad and illegal racial profiling.<sup>125</sup> In opposition to this partnership, cities have adopted ordinances that limit their cooperation with the national government to enforcement immigration law, often referred to as “sanctuary cities.”<sup>126</sup> Advocates of sanctuary cities argue that this protection improves public safety as it increases the likelihood of crime reporting amongst immigrant populations and improves police and immigrant community relations.<sup>127</sup> In 2007, legislation was put forth targeting sanctuary cities by threatening to withhold federal funding.<sup>128</sup> Similarly, on January 25, 2017, President Trump signed an executive order directing DHS and the DOJ to defund sanctuary jurisdictions refusing to comply with federal immigration law.<sup>129</sup> On April 25, 2017, Judge William H. Orrick temporarily blocked this order arguing President Trump had acted outside of his executive power.<sup>130</sup> In the wake of this debate, the Committee heard testimony highlighting local concern about partnership between local and federal law enforcement agencies. When asked for one concrete idea to improve police and community relations, Henry Jimenez, the executive director of the Minnesota Council on Latino Affairs recommended, “no police department or no police

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<sup>123</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 18.

<sup>124</sup> 104<sup>th</sup> Congress 110 Stat. 2009 Illegal Immigration Reform and Immigrant Responsibility Act *USCIS* Sept.30, 1996, <https://www.uscis.gov/sites/default/files/ocomm/ilink/0-0-0-10948.html> (last accessed May 5, 2017).

<sup>125</sup> 287 (G) *Agreements*, ACLU, <https://www.aclu.org/other/287g-agreements> (last accessed May 5, 2017).

<sup>126</sup> Jasmine C. Lee, Rudy Omri & Julia Preston, *What Are Sanctuary Cities?*, *The New York Times* Feb. 6, 2017, [https://www.nytimes.com/interactive/2016/09/02/us/sanctuary-cities.html?\\_r=0](https://www.nytimes.com/interactive/2016/09/02/us/sanctuary-cities.html?_r=0) (last accessed May 5, 2017).

<sup>127</sup> Wayne A. Cornelius, Angela S. Garcia & Monica W. Varsanyi, *Giving Sanctuary to undocumented immigrants doesn’t threaten public safety—it increases it*, *Los Angeles Times*, Feb. 2, 2017, <http://www.latimes.com/opinion/op-ed/la-oe-sanctuary-cities-trump-20170202-story.html> (last accessed May 5, 2017).

<sup>128</sup> Emily Bazar, *Lawmakers seek ‘sanctuary cities’ crackdown*, *USA Today*, Oct. 24, 2007, [https://usatoday30.usatoday.com/news/nation/2007-10-24-nosanctuary\\_n.htm](https://usatoday30.usatoday.com/news/nation/2007-10-24-nosanctuary_n.htm) (last accessed May 31, 2017).

<sup>129</sup> Donald Trump, *Executive Order: Enhancing Public Safety in the Interior of the United States*, The White House: Office of the Press Secretary, Jan. 25, 2017, <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united> (last accessed May 5, 2017).

<sup>130</sup> Vivian Yee, *Judge Blocks Trump Effort to Withhold Money from Sanctuary Cities*, *The New York Times*, April 25, 2017, <https://www.nytimes.com/2017/04/25/us/judge-blocks-trump-sanctuary-cities.html> (last accessed May 5, 2017)

officer to be used as immigration enforcement officers.”<sup>131</sup> He highlighted the fear that the Latino community is feeling with the threat of these partnerships and with the anti-immigrant national sentiment by saying, “I used to get 20 phone calls a week, and after late November I get 20 phone calls a day.”<sup>132</sup> Deputy Sergeant Kellace McDaniel demonstrated this anxiety when he shared that a Latina woman, after noticing a group of police officers across the street from her, asked him, “are the cops going to come and lock us all up?”<sup>133</sup> Without clear distinction between federal law enforcement and local law enforcement trusting relations between immigrant communities and police are in danger.

When law enforcement officials were asked about cooperation with ICE, Chief Axtell responded by saying “I have said during my entire career that if our police department is viewed by our immigrant communities, people that may be disenfranchised, as an arm of the government, that we will come in to sweep them and deport them, there will be several things that will happen. First of all, we won’t have the trust of our communities in St. Paul. Victimization rates of members of community that may be undocumented will go through the roof, because if they are afraid of reporting crimes because of fear of deportation, they will be victimized at higher rates, and other people will perpetrate violence against those communities, because they know that you’re not going to report crimes.”<sup>134</sup> To this point, Mr. Jimenez discussed a bill that would create a uniform system for U visa determination throughout the state of Minnesota.<sup>135</sup> U visas are a form of relief and pathway to permanent residency for undocumented victims of certain crimes who have cooperated with law enforcement in the investigation or prosecution of criminal activity.<sup>136</sup> Mr. Jimenez pointed out that, “over 100 U visa applications have been filed in the St. Paul Police Department, and I believe less than five have been granted.”<sup>137</sup> Due to changing legislation around collaboration between local and federal law enforcement agencies, there may be a perception that all law enforcement is the same.

Some panelists suggested that the lack of trust between immigrant communities and law enforcement goes beyond concern over federal immigration policies. Ms. Welii, a Somali immigrant and the executive director of a non-profit dedicated to providing health and education services to Somali women living in Minnesota, described how efforts to build partnerships between law and enforcement and immigrant communities are often derailed due to negative stereotypes about Somali immigrants: “We hear oh, you have a language barrier. You don’t understand the system. Some people have Bachelor’s degrees, it doesn’t mean if you don’t speak English you’re stupid. In fact some people speak eight languages, they’re PhD holders. People

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<sup>131</sup> Transcript (statement by Henry Jimenez) at 180-181.

<sup>132</sup> *Id.* at 146.

<sup>133</sup> Transcript (statement by Deputy Sergeant Kellace McDaniel) at 270.

<sup>134</sup> Transcript (statement by Axtell) at 268.

<sup>135</sup> Transcript (statement by Jimenez) at 145.

<sup>136</sup> *Victims of Criminal Activity: U Nonimmigrant Status. U.S. Citizenship and Immigration Services*, <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status> (last accessed May 5, 2017).

<sup>137</sup> Transcript (statement by Jimenez) at 145.

are acting like their stupid.”<sup>138</sup> Ms. Weli testified that this dismissive attitude is particularly frustrating because Somali communities in Minnesota “want to build trust. We want to come to the table, but not when the decision is made, twenty fifth floor.”<sup>139</sup> We’re not interested, but we come to this table over and over again because we’re desperate for relationship-building. We’re desperate in some sort of movement.”<sup>140</sup>

As with many of the Task Force’s recommendations, communication is essential to improving relations between immigrant communities and law enforcement. Deputy Sergeant McDaniel testified that the Hennepin County Sheriff’s Office strives to make sure that all literature put out by the Sherriff’s Office is translated into Spanish and Somali. Deputy Sergeant McDaniel also discussed more informal efforts by the Sheriff’s Office to reach out to immigrant communities, including appearing on Spanish and other non-English radio shows to discuss issues surrounding policing in Minnesota. Despite these efforts, Deputy Sergeant McDaniel’s testimony indicated that more can be done to facilitate communication between immigrant communities and law enforcement. For example, Deputy Sergeant McDaniel testified that the Latino resident council, which was established by the Sheriff’s Office as a way for members of the Latino community to express their concerns directly to the Sheriff’s Office, has not met as frequently as was intended and is in the process of being restructured.<sup>141</sup>

## **B. Pillar 2: Policy & Oversight**

According to the Task Force, trust and legitimacy are grounded in clear and fair policies based on community input and comprehensive data collection.<sup>142</sup> Accountability and oversight of these policies by independent review is essential to building and maintaining trust between the community and law enforcement.<sup>143</sup>

### **1. Data Collection**

The Task Force highlights the importance of collecting data on law enforcement agencies demographic composition as well as the necessity to “collect, maintain, and analyze demographic data on all detentions (stops, frisks, searches, summons, and arrests).”<sup>144</sup> In Minnesota, the Bureau of Criminal Apprehension (BCA) and the Minnesota Board of Peace Officer Standards and Training (POST) track some information on law enforcement employees including gender, there is no data on racial or ethnic diversity of law enforcement officers or

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<sup>138</sup> 2017 Transcript (statement by Fartun Weli) at 176.

<sup>139</sup> *Id.* at 178-179.

<sup>140</sup> *Id.*

<sup>141</sup> Transcript (statement by McDaniel) at 278.

<sup>142</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 19.

<sup>143</sup> *Id.* at 21.

<sup>144</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 24.

employees.<sup>145</sup> Without accurate information on officer demographics it is challenging to evaluate the diversity of Minnesota police departments.

Mr. Kappelhoff asserted, “It is imperative that the police departments collect and analyze data on police interactions with the public. This is necessary so departments are able to identify and address any bias or other issues that undermine trust between the public and the department.”<sup>146</sup> In Minnesota, criminal justice agencies must provide incident and arrest data to the (BCA) to meet state and federal reporting requirements.<sup>147</sup> Each year, the BCA compiles a report including information on offenses, arrests, and officer deaths with breakdowns of demographic indicators.<sup>148</sup> However, each individual law enforcement agency is responsible for collecting and reporting their data to the BCA and there have been suggestions that because of this, the BCA data is inaccurate. For example, according to the BCA database, “Woodbury officers didn’t fire a single incident-related round all year long in 2012.”<sup>149</sup> In 2012, there was a highly publicized incident in which a teenager was shot and killed by Woodbury police,<sup>150</sup> undermining the data integrity of this database. Mr. Terrell highlighted the absence of accurate data, “We’d like to see a place where use of force gets tracked across the state that is accessible to communities.”<sup>151</sup> It is essential that not only are there data collection standards, but also enforcement mechanisms for agencies like the BCA to ensure that each department is submitting accurate data.

There are some indications that departments are collecting valuable data. Mr. Feist indicated that the Minneapolis Police Department had begun collecting data on stop-and-frisk encounters.<sup>152</sup> Furthermore, the ACLU of Minnesota obtained data from the MPD that when aggregated exposed blatant racial disparities in policing in Minneapolis particularly for African American and Native residents.<sup>153</sup> In response to this report, Chief Harteau indicated that the MPD has begun to collect more detailed information to better understand police encounters by tracking, “suspicious vehicle stop, suspicious persons, traffic, truancy, curfew, and others, we get all of the demographic data, not just ethnicity, gender, we do other things as well, if somebody identifies

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<sup>145</sup> *Minnesota Uniform Crime Report*, Minnesota Department of Public Safety <https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Documents/2015-Minnesota-Uniform-Crime-Report.pdf> (last accessed May 5, 2017); *Statistics*, Minnesota Board of Peace Officer Standards and Training (POST) <https://dps.mn.gov/entity/post/Pages/statistics.aspx> (last accessed May 5, 2017).

<sup>146</sup> Transcript (statement by Kappelhoff) at 310-311.

<sup>147</sup> *Minnesota Uniform Crime Report*, Minnesota Department of Public Safety <https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Documents/2015-Minnesota-Uniform-Crime-Report.pdf> (last accessed May 5, 2017).

<sup>148</sup> *Id.*

<sup>149</sup> *Picking up the Pieces: A Minneapolis Case Study*, ACLU <https://www.aclu.org/feature/picking-pieces> (last accessed May 15, 2017).

<sup>150</sup> Tad Vezner & Dan Bauman, *How many Minnesota police encounters turn fatal? Don’t ask the state*, Twin Cities: Pioneer Press, Nov.17, 2015 <http://www.twincities.com/2015/11/17/how-many-minnesota-police-encounters-turn-fatal-dont-ask-the-state/> (last accessed May 31, 2017).

<sup>151</sup> Transcript (statement by Justin Terrell) at 109; (statement by Porter) at 135.

<sup>152</sup> Transcript (statement by Feist) at 89.

<sup>153</sup> *Picking up the Pieces: A Minneapolis Case Study*, ACLU <https://www.aclu.org/feature/picking-pieces> (last accessed May 15, 2017).

as trans, so we make sure that we have those components in there.”<sup>154</sup> Chief Axtell also highlighted the importance of data collection and dissemination for the St. Paul Police Department, “We have been collecting traffic stop data in St. Paul for near 16 years now, but we’ve never published this data and what it shows. Last fall, we decided to do just that, and we’re committed to quarterly and annually updates to our traffic stop data, which measures the race of the person stopped; the reason for the stop; were they cited; were they frisked; were they arrested.”<sup>155</sup> Chief Axtell indicated that this data is available to the public via the St. Paul Police Department website.<sup>156</sup> These are great examples of departments committed to accurate data collection and transparency, but it is important that these efforts are standardized across the state.

The Task Force also recommended tracking “the level of trust in police by their communities.”<sup>157</sup> Mr. Terrell indicated that “Police should actually be asking people in their community that they serve how they feel, about the way that they could serve on a regular basis and vice versa.”<sup>158</sup> Jay Cohen with Rad Azns indicated that in 2015 API’s for Black Lives in conjunction with Asian American Organizing Project conducted a survey by canvassing “Asian American neighborhood residents about the police killing of Jamar Clark and their own experiences with police.”<sup>159</sup> While officers talked about tracking and releasing data, they did not specifically discuss formalized ways of surveying communities about their satisfaction with police.

## 2. *Policies*

Data collection is essential for positive policy production. Mr. Kappelhoff suggested, “The only way to find evidence based policies is to have the evidence to support that.”<sup>160</sup> Better data collection can elucidate successful interventions and expose policy limitations, both of which are important to inform policy standardization throughout the state. Furthermore, the Task Force indicates that, “Policies should be reflective of community values and not lead to practices that result in disparate impacts on various segments of the community.”<sup>161</sup>

There is currently a bill in the Minnesota Legislature to increase police training funds to \$7 million including mandatory training in crisis intervention, conflict management and cultural issues for all Minnesota police officers. Crisis intervention training is particularly relevant because in 2016, the Star Tribune found that 45% of all people who died from a physical confrontation with law enforcement in Minnesota since January 2000 had a history of mental illness. This is of special concern to the Committee as disability is a federally protected class.

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<sup>154</sup> Transcript (statement by Harteau) at 200-201.

<sup>155</sup> Transcript (statement by Axtell) at 265.

<sup>156</sup> *Id.* at 265- 266.

<sup>157</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 16.

<sup>158</sup> Transcript (statement by Terrell) at 108.

<sup>159</sup> Transcript (statement by Jay Cohen) at 361.

<sup>160</sup> Transcript (statement by Kappelhoff) at 334.

<sup>161</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 19.

Sheriff Stuart<sup>162</sup>, Chief Axtell<sup>163</sup> and Chief Harteau<sup>164</sup> all testified that their officers are receiving iterations of mental health, de-escalation, or crisis intervention training. Chief Axtell highlighted that St. Paul police officers divert calls to Ramsey County Crisis, “so that a mental health professional can help the caller through what is going on and hopefully get it treated as a mental health issue and not a law enforcement issue.”<sup>165</sup> Chief Axtell highlighted that they are looking for funding opportunities to “partner up mental health professionals with officers who are responding to those calls for service where we know mental health is an issue.”<sup>166</sup> It is promising that the SPDP is pursuing this partnership and the Committee would be interested to learn more about the scalability of this solution.

These trainings may be specifically aimed at better serving residents with mental health concerns, but use of force policies are also an important aspect of this challenge. The Task Force recommends clear and comprehensive policies regarding use of force.<sup>167</sup> Minnesota Statute indicates that “the head of every local and state law enforcement agency shall establish and enforce a written policy governing the use of force, including deadly force...by peace officers...employed by the agency.”<sup>168</sup> The state also provides a Model Policy for Use of Force and Deadly Force with suggested language.<sup>169</sup> Mr. Feist indicated that MPD is providing stronger guidelines for de-escalation in its use of force policy,<sup>170</sup> however, each jurisdiction creates their own use of force policies and procedures. The Committee would like to explore whether stronger use of force guidelines might address some of issues Minnesota law enforcement agencies have had when serving vulnerable populations.

In order to build trust with communities, the Task Force recommends each department “embrace a culture of transparency” in which policies and data are made available for public consumption.<sup>171</sup> The Task Force also encourages departments to address citizens and media following serious incidents of alleged police misconduct.<sup>172</sup> Chief Axtell spoke at length about the efforts that the St. Paul police department is going to in order to ensure transparency and accountability. He emphasized that their website highlights law enforcement policies and that his department is regularly releasing data sets about police activity with a general commitment to more transparency about data.<sup>173</sup> The challenge again is there is such variability between departments about how data is collected and distributed that widespread accountability and transparency is a real obstacle. Chief Axtell also chose to spend part of his testimony apologizing

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<sup>162</sup> Transcript (statement by Stuart) at 217.

<sup>163</sup> Transcript (statement by Axtell) at 271-272.

<sup>164</sup> Transcript (statement by Harteau) at 201.

<sup>165</sup> Transcript (statement by Axtell) at 272-273.

<sup>166</sup> *Id.* at 273.

<sup>167</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 20 & 22.

<sup>168</sup> Minn. Stat. §626.8452

<sup>169</sup> Transcript (statement by Feist) at 89.

<sup>170</sup> *Id.* at 89.

<sup>171</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 85.

<sup>172</sup> *Id.* at 13.

<sup>173</sup> Transcript (statement by Axtell) at 250.

directly for a few local incidences of police misconduct with a commitment of accountability and improvement.<sup>174</sup> This is a demonstration that some departments have embraced the recommendations of the Task Force and can serve as models for other departments, however without clearer statewide standards it will be challenging to implement these best practices on a large scale.

The Task Force recommends that, “Law enforcement agencies should create policies and procedures for policing mass demonstrations,” “to minimize the appearance of military operation and to avoid using provocative tactics and equipment that undermine civilian trust.”<sup>175</sup> The Minneapolis Police Department, in particular, has been criticized for management of the mass protests, especially following the fatal shooting of Jamar Clark in 2015. The DOJ report provided a few recommendations, “as they relate to the response in Minneapolis, but apply more generally to civil disturbances across the nation.”<sup>176</sup> These recommendations include the following:<sup>177</sup>

- Clearly define leadership roles and responsibilities among elected officials, law enforcement, and other agencies to ensure coordinated and collaborative response to civil disturbance and other critical incidents.
- Plan and exercise the unified command system for complex incidents during routine public safety response and operations.
- Clear, concise, and consistent communication, particularly during critical incidents, is key to establishing trust and credibility.
- Prioritize officer safety, wellness, morale, and resilience before, during, and after a critical incident such as a protracted response to civil disturbance.
- Build on positive police-community relationships to help mitigate potential future critical incident responses.

The Task Force also recommends that law enforcement agencies should adopt clear policies prohibiting the discrimination of the LGBT community.<sup>178</sup> There has been a long history in the United States of discrimination and harassment of individuals within the LGBT community by law enforcement. Roxanne Anderson cited a national study of transgender and gender non-

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<sup>174</sup> *Id.* at 251.

<sup>175</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 25.

<sup>176</sup> Frank Straub, Hassan Aden, Jeffrey Brown, Ben Gorban, Rodney Monroe & Jennifer Zeunik, *Maintaining First Amendment Rights and Public Safety in North Minneapolis: An After-Action Assessment of the Police Response to Protests, Demonstrations, and Occupation of the Minneapolis Police Department’s Fourth Precinct*, US Department of Justice, Office of Community Oriented Policing Services, March, 2017, <https://www.policefoundation.org/wp-content/uploads/2017/03/Maintaining-First-Amendment-Rights-and-Public-Safety-in-North-Minneapolis.pdf> (last accessed May 31, 2017).

<sup>177</sup> *Id.*

<sup>178</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 27-28

conforming people entitled “Injustice at Every Turn” to highlight the specific challenges faced by transgender and gender non-conforming individuals.<sup>179</sup> Roxanne pointed out that transgender and gender non-conforming people “are more likely to interact with police because they are more likely to be victims of violent crime.”<sup>180</sup> Furthermore, Roxanne Anderson pointed out that these individuals are, “more likely to be on the street in homelessness or unwelcomed in their own homes. Because of their circumstances, these folks are often forced to work in underground economy and because they face harassment and arrest because they are simply out in public while being transgender.”<sup>181</sup> However, Roxanne also pointed out that the Minneapolis Transgender Equity Council, “works hand-in-hand with police officers to get the information and education they need so that when they come into contact with a trans individual they have different information.”<sup>182</sup> This council is an encouraging step, but LGBT policies and procedures vary between jurisdictions.

### **3. Internal Accountability**

Perceived and actual internal accountability is imperative to law enforcement and community trust. Panelists provided testimony suggesting that when police officers protect one another even in the face of misconduct, it erodes trust between law enforcement and the community, particularly communities of color. Dr. Sole pointed out that, “if the system allows for one person, or one cop to be rogue, the entire system is at fault. If there is one rogue cop in any department, the entire system is flawed. Because if you’re a good guy or one of the good ones, you should be diligent to get rid of the bad ones.”<sup>183</sup> Law enforcement, on the other hand, argued that this code of silence no longer exists in modern law enforcement. Chief Harteau said, “I’ve seen it dramatically change over the 30 years I’ve been at this job, there certainly was some level of culture of protecting each other. No doubt about it. I don’t see that now. Not to any level of consistency.”<sup>184</sup> Similarly, Sheriff Stuart suggested, “Nowadays we just don’t see [the thin blue line] to the same degree, I’m not proud to say it but it is a reality that I’m not ashamed of. Our agency has arrested a wide variety of officers from other agencies...We hold ourselves to the same standard, we hold ourselves to a higher standard when it comes to the law. But internally we hold ourselves to a higher standard.”<sup>185</sup> It was clear that there was a discrepancy between community and law enforcement perceptions of the presence of a code of silence in law enforcement.

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<sup>179</sup> Jaime M. Grant, Lisa A. Mottet & Justin Tanis, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, 2011, [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf)

<sup>180</sup> Transcript (statement by Anderson) at 152.

<sup>181</sup> *Id.* at 152; 153.

<sup>182</sup> *Id.* at 156.

<sup>183</sup> Transcript (statement by Sole) at 158-159.

<sup>184</sup> Transcript (statement by Harteau) at 229.

<sup>185</sup> Transcript (statement by Stuart) at 228.

In Minnesota, there are formal policies to encourage internal accountability. The Minnesota Law Enforcement Code of Ethics<sup>186</sup> as well as the Professional Conduct of Peace Officer Model Policy<sup>187</sup> include provisions requiring officers to report instances of misconduct. Chief Harteau indicated that MPD created a formal policy to ensure this internal accountability, “we also have the duty to report and a duty to intervene. So if an officer sees another officer engaging in what they deem to be unnecessary uses of force, they do have a duty to intervene and a duty to report.”<sup>188</sup> Similarly, Chief Axtell said, “We do have a duty to report policy... We do also, in fact, if you’re asked about it and you lie, you’re fired.”<sup>189</sup> Mr. Kappelhoff suggested other accountability policies to consider including “regular supervisory reviews of officers, early warning systems to identify problematic conduct, and appropriate, equitable, and consistent discipline when warranted.”<sup>190</sup> Despite these new policies, the high number of complaints sent to the Office of Police Conduct Review with little to no recourse for Minneapolis police officers suggest that more can be done to ensure officer accountability. Mr. Terrell suggested that part of the problem is that there are numerous ways officers can protect one another, many of which are not easily reformed. For example, Mr. Terrell described how “some officers, when they respond to a call and they hear other officers are also responding to a call, one officer may give a cell phone call on a personal line and say, ‘You know, I got this one, you don’t need to come to this call.’ Because they didn’t want the officer creating problems at the call.”<sup>191</sup> The instinct to protect fellow officers from situations that might expose their unfitness or lack of training, rather than report them to their superior officers, is both corrosive to public trust and hazardous for officer safety.<sup>192</sup>

A few officers suggested that “bad apples” hurt the entire department and it was in their best interest to get rid of such officers.<sup>193</sup> However, Chief Harteau indicated that firing these “bad apples” can be a difficult task, “My main frustration, frankly, is with arbitrators. I may make a decision to impose discipline, or to terminate an officer once I’ve made a decision knowing all the facts I know, and those decisions are overturned.”<sup>194</sup> There is evidence that police unions and arbitration around the country are consistently reinstating officers that have been “deemed unqualified by their own bosses.”<sup>195</sup> According to Will Aitchison, an attorney who represents

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<sup>186</sup> Minn. Stat. §626.8457 <http://www.doc.state.mn.us/DocPolicy2/Document/107.008.htm>

<sup>187</sup> MN STAT 626.8457 <https://dps.mn.gov/entity/post/model-policies-learning-objectives/Documents/Professional-Conduct-of-Peace-Officers-Model-Policy.pdf>

<sup>188</sup> Transcript (statement by Harteau) at 202.

<sup>189</sup> Transcript (statement by Axtell) at 277-278.

<sup>190</sup> Transcript (statement by Kappelhoff) at 309-310.

<sup>191</sup> Transcript (statement by Terrell) at 109.

<sup>192</sup> Transcript (statement by Kappelhoff) at 305-306.

<sup>193</sup> Transcript (statement by Stuart) at 228-229; 222; (statement by Axtrell) at 260; 278.

<sup>194</sup> Transcript (statement by Harteau) at 229.

<sup>195</sup> Conor Friedersdorf, *How Police Unions and Arbitrators Keep Abusive Cops on the Street*, The Atlantic, Dec. 2, 2014, <https://www.theatlantic.com/politics/archive/2014/12/how-police-unions-keep-abusive-cops-on-the-street/383258/> (last accessed May 31, 2017).

police unions said that “arbitrators in the U.S. have eased or reversed discipline of officers in about 60% of cases since the 1980s.”<sup>196</sup> In 2015, a Minnesota Police Officer, Officer Blayne Lehner was terminated for violating department policies of use of force evidenced by video footage. Furthermore, more than 30 complaint investigations were opened against Officer Lehner potentially demonstrating a pattern of misconduct. The Office of Police Conduct Review (OPCR), a panel of high ranking officers, and Chief Harteau agreed that Officer Lehner should be fired for this behavior. However, an arbitrator ultimately overturned Lehner’s termination and reduced his sanction to 40-hour suspension without pay.<sup>197</sup> Based on the testimony of police officers, leadership suggested a commitment to eliminating any remaining code of silence, however, it is possible that the arbitrator system in Minnesota may prevent departments from purging bad actors.

One potential solution to this problem is to prevent officers with demonstrable records of misconduct from being hired in the first place. To that end, The Task Force recommends an expansion of the National Decertification Index, a data and reporting entity to track officers whose certification has been revoked in order to prevent their rehire in other jurisdictions.<sup>198</sup> There is some evidence that officers who have had their licenses revoked are seeking jobs in other department that are either unaware of their misconduct record or are aware and use that information to pay those officers lower wages.<sup>199</sup>

#### **4. External/Civilian Oversight**

The Task Force recommends civilian oversight of law enforcement<sup>200</sup> as well as external and independent investigations in cases of police use of force resulting in death, officer-involved shootings resulting in injury or death, or in-custody death.<sup>201</sup> Testimony supported both of these recommendations both to build trust between communities and law enforcement, but also as a way of formalizing accountability.

As mentioned earlier, before 2012 the civilian oversight in Minneapolis was the Civilian Review Authority (CRA). Mr. Terrell was part of the CRA for 6 years and explained his time in the following way, “I looked at a lot of autopsy reports on black men, and what I can tell you is that

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<sup>196</sup> Alan Neuhauser, *Arbitration and the Revolving Door of Bad Cops: Don’t blame arbitration*, U.S. News, Oct. 19, 2016, <https://www.usnews.com/news/national-news/articles/2016-10-19/bad-cops-back-on-the-street-dont-blame-arbitration> (last accessed May 31, 2017).

<sup>197</sup> Brandt Williams, *Mpls. Cop gets job back after being fired for violating use-of-force policy*, MPR News, Oct. 18, 2016, <https://www.mprnews.org/story/2016/10/18/minneapolis-police-officer-reinstated-after-firing> (last accessed May 31, 2017).

<sup>198</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 29-30.

<sup>199</sup> Roger L. Goldman, *Rogue cops should not be recycled from one police department to the next*, The Guardian, May 20, 2015, <https://www.theguardian.com/commentisfree/2015/may/20/rogue-cops-should-not-be-recycled-from-one-police-department-to-the-next> (last accessed May 5, 2017).

<sup>200</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 26.

<sup>201</sup> *Id.* at 21.

process needs to be enforced and given more authority.”<sup>202</sup> Similarly, Reverend Jerry McAfee commented, “The reason why many of us who helped start the [CRA] walked away because they took subpoena power out of it.”<sup>203</sup> This testimony corresponded with reports indicating members of CRA felt their effectiveness was limited because police leadership ignored their rulings and recommendations.<sup>204</sup>

The Office of Police Conduct Review (OPCR) replaced the Civilian Review Authority (CRA) in 2012 with the hopes of improving the transparency of investigations.<sup>205</sup> However, according to David Bicking with CAPB, “Since the so-called civilian oversight was overhauled in the city about four years ago in Minneapolis, there has been hardly any discipline of officers that is due to complaints received from civilians. We’ve been tracking this, and for four years so far, based on the data that comes entirely from the office of police conduct review –over 4 years we have seen that only 6 officers have been disciplined resulting from civilian complaints. That’s six out of over 1,500 civilian complaints in that time. And three of those were simply a written reprimand.”<sup>206</sup>

The Police Conduct Oversight Commission (PCOC) is another civilian group that works in conjunction with OPCR. Andrea Brown, the current Chair of PCOC described the commission’s work as identifying trends or patterns that emerge from civilian complaints, officer input, and comparative analysis of national best practices to inform policy recommendations for Minneapolis Police Department. Ms. Brown testified that, in her opinion, a large part of what makes the PCOC so effective is that it is a “neutral” body, meaning it is not predisposed in favor of either civilians or police but rather strives to make recommendations that will be beneficial to the community as a whole. Ms. Brown cited the recent increases in training for crisis intervention, implicit bias, and procedural justice as examples of recommendations made by the PCOC that have been adopted by the Minneapolis Police Department. However, similar to earlier complaints about civilian oversight groups, critics argue the commission does not have enough power and the department rarely implements recommendations.<sup>207</sup>

Dr. Porter shared with the Committee that the Council for Minnesotans of African Heritage had a forum on police and community relations and said, “Some of the recommendations included oversight and accountability, development of a system of civilian review boards, for each community made up of as broad a group of community members as is possible to construct. People who represent diversity of political thought on both sides of the political aisle. The

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<sup>202</sup> Transcript (statement by Terrell) at 107.

<sup>203</sup> Transcript (statement by Jerry McAfee) at 188.

<sup>204</sup> Matt McKinney, *New Minneapolis cop review panel under fire*, Star Tribune, Oct. 10, 2013

<http://www.startribune.com/new-minneapolis-cop-review-panel-under-fire/227153271/> (last accessed Oct.10, 2016).

<sup>205</sup> Minneapolis City Council shines light on police Civilian Review Authority *supra* 17.

<sup>206</sup> Transcript (statement by Bicking) at 345.

<sup>207</sup> Libor Jany, *In Minneapolis, civilian police oversight group strives to be heard*, Star Tribune, Aug. 14, 2016, <http://www.startribune.com/in-minneapolis-civilian-oversight-group-still-wrestling-with-its-identity/390134621/> (last accessed May 10, 2017).

diverse racial, cultural and class make-up of a community. Civilian review boards shall be responsible for doing an independent investigation every time there is an incident of police using force resulting in death or serious bodily harm.”<sup>208</sup> He later added that he thought subpoena power was an important addition to civilian review boards.<sup>209</sup> One major barrier to civilian enforcement power is in the Minnesota Police Bill of Rights, Section 626.89. Subdivision 17 indicates, “A civilian review board, commission, or other oversight body shall not have the authority to make a finding of fact or determination regarding a complaint against an officer or impose discipline on an officer.”<sup>210</sup> This statute is in direct opposition to the recommendations of the Task Force.

Mr. Bicking recommended another accountability measure—that officers be required to obtain “individual professional liability insurance, like doctors, nurses, teachers, so that they have individual responsibility for their conduct. So the insurance premiums would go up if there was a history of lawsuits or an excess of complaints. That would be a deterrent for the officer. Really bad officers could not obtain insurance and could not work.”<sup>211</sup>

### **C. Pillar 3: Technology & Social Media**

The Task Force indicates that the use of technology can help to build trust between law enforcement and community members if its “purposes and goals [are] clearly delineated.”<sup>212</sup> In Minnesota there were conflicting perspectives on the role of technology and its ability to build or undermine trust.

#### **1. Body-Worn Cameras**

The Task Force highlights research that indicates that “the use of [body-worn cameras] BWCs by the police can significantly reduce both officer use of force and complaints of officers...One of the important findings of the study was the impact BWCs might have on the self-awareness of officers and citizens alike. When police officers are acutely aware that their behavior is being monitored (because they turn on the cameras) and when officers tell citizens that the cameras are recording their behavior, everyone behaves better.”<sup>213</sup> Sheriff Stuart said that civilian complaints decrease in the presence of body cameras suggesting that this technology also potentially mitigates false complaint submission.<sup>214</sup>

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<sup>208</sup> Transcript (statement by Porter) at 112.

<sup>209</sup> *Id.* at 135.

<sup>210</sup> MINN. STAT. §626.89 (2017)

<sup>211</sup> Transcript (statement by Bicking) at 345-346.

<sup>212</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 31.

<sup>213</sup> *Id.* at 31-32.

<sup>214</sup> Transcript (statement by Stuart) at 232.

In 2016 at least 40 police departments out of the over 400 departments in Minnesota were using BWCs, however the use of BWCs is up to the discretion and budget of individual departments.<sup>215</sup> In May 2016 Minnesota passed a law governing the use of police body-worn cameras for the departments using this new technology. The law indicates that footage will only be made public if an officer causes someone substantial bodily harm.<sup>216</sup> Mr. Feist of the ACLU argued, “Ultimately, as we engaged in the debate at the state legislature, we believe that body cameras would be a good thing to have to restore the public’s trust, but only if they did so with policies in place that really protected privacy and made sure that there would be true assets to these videos. Unfortunately, we believe that the law passed last year at the state level, which classifies all videos as private data, really missed the mark and made body cameras more a police surveillance tool that will be perceived as a threat to the community, rather than something that will really help to restore the levels of trust with the same people.”<sup>217</sup> To ensure that individuals’ privacy is being protected, Mr. Feist recommended establishing uniform polices requiring officers to notify individuals that they are being filmed. Mr. Feist’s also pointed out that BWC legislation provides each department with broad discretionary power in operational implementation.<sup>218</sup> For example, some departments allow officers to turn the camera off and on whenever they want, Dr. Porter echoed these concerns saying, “We know that body cameras are important but they have to be used properly. Legislation mandating that all of us in the field wear them and keep them on at all times.”<sup>219</sup>

Dr. Ruhland suggested that focus on body cameras may be misplaced, pointing out that “hot spot” policing tactics include, “surveillance techniques, such as shots fired GIS mapping, cameras surveilling the location, with a great deal of resources being dedicated to these surveillance techniques.”<sup>220</sup> Dr. Ruhland pointed out that preventative techniques that may directly address “underlying drivers of crime”<sup>221</sup> are much less common. Finally she suggests that these tactics “further decrease the trust between community and police and police and community.”<sup>222</sup> Dr. Ruhland suggests that some of the budget allocated to costly surveillance techniques could be reallocated to community policing techniques.<sup>223</sup> It is possible that if body camera regulation in Minnesota were designed to protect citizens, it could be both a preventative and surveillance tool.

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<sup>215</sup> Jennifer Mayerle, *How Are Minnesota Police Departments Using Body Cameras?*, CBS Minnesota, July 18, 2016, <http://minnesota.cbslocal.com/2016/07/18/minnesota-police-body-cameras/> (last accessed May 15, 2017).

<sup>216</sup> Tad Vezner, *Dayton signs law governing police body cameras and footage*, Twin Cities Pioneer Press, May 31, 2016, <http://www.twincities.com/2016/05/31/dayton-signs-law-governing-police-body-cameras-and-footage/> (last accessed May 31, 2017).

<sup>217</sup> Transcript (statement by Feist) at 91-92.

<sup>218</sup> *Id.* at 92.

<sup>219</sup> Transcript (statement by Porter) at 114.

<sup>220</sup> Transcript (statement by Ruhland) at 55-56.

<sup>221</sup> *Id.* at 56.

<sup>222</sup> Transcript (statement by Ruhland) at 56.

<sup>223</sup> *Id.* at 66-67.

## 2. *Social Media*

The Task Force suggests that, “social media is a communication tool the police can use to engage the community on issues of importance and to gauge community sentiment regarding agency policies and practices.”<sup>224</sup> Furthermore, the Task Force indicates that social media can be used for tactical purposes to identify “criminal or disorderly activity.”<sup>225</sup> The Committee heard some testimony indicating law enforcement agencies utilize social media in outreach efforts and as a community building tool. According to Deputy Sergeant McDaniel, “Social media is huge...we’ve incorporated Facebook, everybody’s on Facebook, we have some of our messaging on Twitter. The Sheriff is pretty passionate about a lot of this. It’s a good way to actually get out information about the sheriff’s office, it’s an easier way.”<sup>226</sup>

However, the Task Force also highlights the challenges posed by social media, “False or incorrect statements made via social media, mainstream media, and other means of technology deeply harm trust and legitimacy and can only be overcome with targeted and continuing community engagement and repeated positive interaction. Agencies need to unequivocally discourage falsities by underlining how harmful they are and how difficult they are to overcome.”<sup>227</sup> There was substantial testimony to indicate officers and other panelists saw social media as an obstacle for building trust between law enforcement and communities. Mr. Kappelhoff discussed this distrust, “For millions of Americans, this shadow has been cast by stories of police misconduct and abuse that are passed from generation to generation, and then validated by personal experience, or through high profile incidents that are broadcast on our television screens and through social media.”<sup>228</sup> Mr. Zahn argued that negative stories are much more frequent via social media, “It’s very difficult, whether it’s social media or media, to get positive stories out there happening. Because they’re happening in your community every day. But a lot of times bad news is what sells.”<sup>229</sup> Lt. Kroll “so those types of false narratives that were perpetuated in the media and perpetuated by politics at play, whether it’s through peace organizations, things like this. This has set us back greatly and our officers have borne that and they’re doing the best they can to move forward.”<sup>230</sup> Mr. Gallagher reiterated this sentiment, “Although you will not get this from the media, or even some leaders of the communities we serve, the Minnesota officer does not care what color a person’s skin is, what religion they follow or where they live.”<sup>231</sup> Similarly, Sheriff Stuart suggested, “While the men and women in law enforcement strive to make positive improvements across our nation the media has reported on the perceived erosion of trust between the police and public oftentimes the facts are not

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<sup>224</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 32.

<sup>225</sup> *Id.*

<sup>226</sup> Transcript (statement by McDaniel) at 241.

<sup>227</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 37.

<sup>228</sup> Transcript (statement by Kappelhoff) at 304.

<sup>229</sup> Transcript (statement by Shane Zahn) at 101

<sup>230</sup> Transcript (statement by Kroll) at 212-213.

<sup>231</sup> Transcript (statement by Gallagher) at 224.

allowed to be a factor.”<sup>232</sup> While officers felt the media painted them with a “broad brush,”<sup>233</sup> this was disputed by the testimony of some community members about their personal experiences. It is possible that community members find that social media provides added accountability to law enforcement agents.

In relation to increased scrutiny on policing, panelists discussed the potential impact of “the Ferguson effect” on policing, a name first used by the St. Louis, Missouri police chief following the Michael Brown incident and the rioting that followed. Currently there are conflicting opinions about whether “the Ferguson effect” exists and its impact on crime rates.<sup>234</sup> An FBI “Assailant Study” issued in May 2017 suggests the existence of a “Ferguson effect” on violence against police.<sup>235</sup> The study, which was based on interviews of police officials and officers from 13 departments where an officer was killed in the line of duty in 2016, concluded that several high-profile police incidents since 2014, beginning with the Michael Brown shooting in Ferguson and the social disturbances that followed “initiated a movement that some perceived made it socially acceptable to challenge and discredit the actions of law enforcement.” “Nearly every police officer interviewed” as part of the study “agreed that for the first time, law enforcement not only felt that their national political leaders politically stood against them, but that politician’s words and actions signified that disrespect to law enforcement was acceptable in the aftermath of the Brown shooting.”<sup>236</sup>

This intense scrutiny and criticism law enforcement has received in the wake of several high-profile incidents has caused officers to (1) ‘become scared and demoralized’ and (2) avoid interacting with the community.”<sup>237</sup> The study goes on to conclude that this shift in officers’ attitudes represents a threat to public safety, as “assailants understand that officers are less willing to escalate force, and therefore have become bolder and more brazen in their attempts to resist.”<sup>238</sup>

Lt. Kroll suggested that Minneapolis may be experiencing the Ferguson effect: “I’m hearing it from officers that because of lack of community support, lack of political support, adverse effect in the media, that they’re thinking twice before getting out and investigating suspicious circumstances.”<sup>239</sup> Kroll went on to say that “I’m hearing it, but it’s a very difficult item to

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<sup>232</sup> Transcript (statement by Stuart) at 220.

<sup>233</sup> *Id.* at 220; (statement by Axtell) 253; 264.

<sup>234</sup> Neil Gross, *Is There a ‘Ferguson Effect’?*, *The New York Times*, Sept. 30, 2016, [https://www.nytimes.com/2016/10/02/opinion/sunday/is-there-a-ferguson-effect.html?\\_r=0](https://www.nytimes.com/2016/10/02/opinion/sunday/is-there-a-ferguson-effect.html?_r=0) (last accessed May 15, 2017); *But see* Heather MacDonald, *The Ferguson Effect Lives On*, *City Journal*, Dec. 23, 2016.

<sup>235</sup> *The Assailant Study – Mindsets and Behaviors*, Federal Bureau of Investigation, [http://www.mcsheriffs.com/pdf/news/vale\\_study\\_final.pdf](http://www.mcsheriffs.com/pdf/news/vale_study_final.pdf). (last accessed Dec. 21, 2017).

<sup>236</sup> *Id.*

<sup>237</sup> *The Assailant Study – Mindsets and Behaviors*, Federal Bureau of Investigation, [http://www.mcsheriffs.com/pdf/news/vale\\_study\\_final.pdf](http://www.mcsheriffs.com/pdf/news/vale_study_final.pdf). (last accessed Dec. 21, 2017).

<sup>238</sup> *Id.*

<sup>239</sup> Transcript (statement by Kroll) at 224-225.

measure.”<sup>240</sup> Chief Harteau spoke of the potential impacts of the Ferguson effect, “I would say probably with select individual officers, probably, but a blanket, no?”<sup>241</sup> They both alluded to the challenge of collecting accurate data on this phenomenon.

## **D. Pillar 4: Community Policing & Crime Reduction**

According to the Task Force, “Community policing is a philosophy that promotes organizational strategies that support the systemic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.”<sup>242</sup> The Committee heard testimony about the different innovative ways in which Minnesota law enforcement agencies are engaging with communities to co-produce safety as well as areas departments need to improve.

### ***I. Non-enforcement Activities***

In order to create partnerships, officers must “get to know the residents, businesses, community groups, churches, and schools on their beat and work with them to identify and address public safety challenges.”<sup>243</sup> The Committee heard testimony about these day-to-day efforts departments and officers are making to engage community and build trust. Chief Harteau highlighted the importance of community engagement by saying, “I learned everything I needed to know about being a good cop frankly and being a good chief by walking a beat. I didn’t have a squad car, I didn’t have that barrier, I got out and I talked to people and I knew everybody and they told me everything I needed to know. We had a great working relationship.”<sup>244</sup> Similarly, Officer Ferraro discussed “police proactive visits” where the St. Paul Police officers reach out to the community on a daily basis. Officer Ferraro provided a few examples, “Whether it’s on a call for service, or whether we’re between calls, and we have ten minutes where we can stop by the local church on Payne Avenue. On Monday nights they have their dinners, every single Monday night...when we walk in, when we smile, we say hi to people, and we shake hands.”<sup>245</sup> Roxanne Anderson provided an acute example of positive community engagement—during the Minneapolis Transgender Summit community members felt intimidated and unsafe with officers participating in the work force group. Roxanne explained, “Through that community engagement process we found that folks were feeling like they didn’t want to engage if officers were the ones to be there and they were going to be in uniform. So our Police Chief listened to that, and Deputy Chief Rondo listened to that and the next year officers showed up in their golf shirts and their

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<sup>240</sup> *Id.* at 225.

<sup>241</sup> Transcript (statement by Harteau) at 207.

<sup>242</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 41.

<sup>243</sup> *Id.* at 43.

<sup>244</sup> Transcript (statement by Harteau) at 207.

<sup>245</sup> Transcript (statement by Ferraro) at 256.

khaki pants and made folks feel engaged and welcomed in a really different way.”<sup>246</sup> Dr. Ruhland suggested that community members would like more of these engagement efforts, “They want the police to attend community events, public forums. When they have Community Night Out, National Night Out, they want the police to attend those events...They [want] police to authentically engage in those community relationships.”<sup>247</sup>

Similarly, the Task Force indicates that, “Law enforcement agencies should create opportunities in schools and communities for positive non-enforcement interactions with police. Agencies should also publicize the beneficial outcomes and images of positive, trust-building partnerships and initiatives.”<sup>248</sup> Each law enforcement panelist discussed their non-enforcement community engagement efforts. Many efforts were aimed specifically at engaging youth. Chief Axtell discussed St. Paul’s junior police academies and education funding available for those interested in careers in law enforcement.<sup>249</sup> Sheriff Stuart and Deputy Sergeant McDaniel discussed fishing excursions with youth from the communities they serve.<sup>250</sup> Deputy Sergeant McDaniel reflected, “One of the main things I like to see is a kid that has never fished before, to see their face after they catch a fish.”<sup>251</sup> Mr. Gallagher discussed community engagement programs intended to provide youth with positive interactions with officers, but named other programs such as “police athletic leagues, bike programs, coffee with cops, et cetera. There is just so many different programs we have now it’s unbelievable.”<sup>252</sup> Sheriff Stuart articulated engagement efforts with youth as a way of, “[helping] those students connect with our law enforcement officers and see our squad cars and equipment up close and personal. We also strive to develop future leaders through our police explorers program.”<sup>253</sup> He goes on to say, “We are involved in numerous other programs supporting charities, community and civic groups and efforts to help or serve our citizens. Our activities are specially geared towards ensuring that we are not just responsive to our community but that we are an integral part of that community.”<sup>254</sup> These non-enforcement efforts are an important way of building trust and legitimacy with communities.

Former Minneapolis City Council President Barbara Johnson, who represented the Fourth Ward in Minneapolis for twenty years also testified about community policing. She commended the efforts of Chief Harteau for encouraging officers to engage with the community through such gatherings as ice cream socials, hot dog night, and organized athletic events. Council President Johnson testified that she represents a challenging constituency, with its high crime rate and conflicting attitudes toward the police. She stated that people are very concerned about their safety but also want to be treated respectfully by officers. When asked what she and her

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<sup>246</sup> Transcript (statement by Anderson) at 149.

<sup>247</sup> Transcript (statement by Ruhland) at 65-66.

<sup>248</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 15.

<sup>249</sup> Transcript (statement by Axtell) at 251.

<sup>250</sup> Transcript (statement by Stuart) at 218; (statement by McDaniel) at 239.

<sup>251</sup> *Id.* at 239.

<sup>252</sup> Transcript (statement by Gallagher) at 245.

<sup>253</sup> Transcript (statement by Stuart) at 219.

<sup>254</sup> *Id.*

constituents most wanted to see from the police department, she responded that citizens want a “fast response” on 911 calls, which can mean “beefing up our actual number of officers.”<sup>255</sup> The other point she made is that hearing from her constituents “almost across the board” that they want “violent criminals . . . away from our society.”<sup>256</sup>

## 2. *Community Policing*

Dr. Ruhland alluded to the work of the Camden County (New Jersey) Police Department as a model of community policing saying, “police officers are going up to people, going up to their doors, just interacting with people, and the effects that that’s having on decreasing crime.”<sup>257</sup> Camden, a city that has had to contend with high poverty and crime rates took the drastic step of replacing its entire police force between 2012 and 2013. This new force is committed to community policing instructing officers to walk their beats and build relationships with community members. Since these changes, violent crime has decreased and experts have lauded this as an example of the benefits of community policing.<sup>258</sup>

Building trust within through community policing is in opposition to “broken windows policing.” The broken windows model of policing emphasizes the importance of eliminating disorder (graffiti, loitering, etc) to prevent more serious crime. This method of policing was most notably implemented by the New York City Mayor, Rudy Giuliani in the early 1990s. Initially, broken windows policing was credited with a significant decline in violent crime, but upon later investigation, violent crime was dropping around the country in jurisdictions that were not implementing this type of policing. According to the Center for Evidence-Based Crime Policy, currently there is mixed data on whether broken windows policing reduces crime,<sup>259</sup> but there is extensive evidence to say that this type of policing comes at the expense of citizen satisfaction and perceptions of legitimacy of police.<sup>260</sup> Dr. Ruhland indicated that the Minneapolis police department is implementing tactics that seem to be very similar to broken windows policing. She describes their efforts, “often used in hot spot policing is using traffic stops and searches as stops to catch bigger fish, so you’re pulling people over for minor offenses, no turning on a red, not using your blinker, with the hopes of finding potentially drugs or finding people who have warrants, or finding somebody suspected in another crime. These techniques are not used in

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<sup>255</sup> Transcript (statement by Johnson) at 329.

<sup>256</sup> *Id.*

<sup>257</sup> Transcript (statement by Ruhland) at 66.

<sup>258</sup> Joseph Goldstein, *Changes in Policing Take Hold in One of the Nation’s Most Dangerous Cities*, The New York Times, April 2, 2017, [https://www.nytimes.com/2017/04/02/nyregion/camden-nj-police-shootings.html?\\_r=0](https://www.nytimes.com/2017/04/02/nyregion/camden-nj-police-shootings.html?_r=0) (last accessed May 31, 2017).

<sup>259</sup> *Broken Windows Policing*, Center for Evidence-Based Crime Policy, <http://cebcp.org/evidence-based-policing/what-works-in-policing/research-evidence-review/broken-windows-policing/> (last accessed May 31, 2017).

<sup>260</sup> Renee Klahr, Maggie Penman, Tara Boyle, Jennifer Schmidt & Shankar Vedantam, *How A Theory of Crime And Policing Was Born, And Went Terribly Wrong*, NPR, Nov.1, 2016, <http://www.npr.org/2016/11/01/500104506/broken-windows-policing-and-the-origins-of-stop-and-frisk-and-how-it-went-wrong> (last accessed May 15, 2017).

other suburban areas. They are commonly used in low-income, racially diverse areas.”<sup>261</sup> Dr. Ruhland goes on to say, “I contend that the use of hot spot policing tactics further decrease the trust between community and police.”<sup>262</sup> When asked about the merits of broken windows policing, Dr. Keese provided a tempered response, “typically, low level crimes, arrests over low level crimes we look at historically as not always the best way to go...So we know that we have, in our—those of us who have mental health issues, homelessness. And the ability to deal with those issues, not necessarily on a low level crime and making that a criminal piece, but how do you then begin to address that from a social piece?”<sup>263</sup> Dr. Ruhland echoed these remarks suggesting, “problem-oriented policing initiatives [that] focus on direct issues and use a variety of tactics to understand the underlying drivers of crime.”<sup>264</sup> These suggestions align more with community policing than with broken window tactics.

There was testimony indicating that community members should be involved in the creation of policies and program curriculum related to public safety to ensure positive impact and relevance. Dr. Keese said, “The inclusion of community starts with curriculum development. Since we are serving the community, we really want to know that what we are training officers and educating them to do is what we want it do it. So it’s critical that we do have the voice of the community in curriculum development.”<sup>265</sup> Roxanne Anderson similarly recommended that law enforcement agencies should partner with those individuals most affected by police brutality to provide training and education.<sup>266</sup> Ms. Baxter more generally asserted this sentiment by quoting a community member saying, “If the criminal justice was designed by people who believe they might one day be involved, he said, then we would have justice.”<sup>267</sup> The co-production of safety with impacted communities and the importance of community partnerships seemed to be an overlapping theme.

### 3. *Community Partnerships*

Community partnerships are an essential element of community policing. According to the Task Force, “to be most effective, community policing also requires collaborative partnerships with agencies beyond law enforcement.”<sup>268</sup> Sheriff Stuart outlined the importance of these partnerships, “Each agency must employ leadership that engages community that it serves. That the agency identifies the unique aspects of its own population and develops new ways to reach out for new partnerships and collaborative efforts. Hopefully these collaborative efforts will also develop partnerships that will lead to efforts that will also aid in addressing the societal

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<sup>261</sup> Transcript (statement by Ruhland) at 55.

<sup>262</sup> *Id.* at 56.

<sup>263</sup> Transcript (statement by Keese) at 69.

<sup>264</sup> Transcript (statement by Ruhland) at 56.

<sup>265</sup> Transcript (statement by Keese) at 78.

<sup>266</sup> Transcript (statement by Anderson) at 180.

<sup>267</sup> Transcript (statement by Baxter) at 39.

<sup>268</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 42.

breakdowns that are often overlooked or considered too political to actually discuss.”<sup>269</sup> Dr. Ruhland affirmed the importance of partnerships, “The police are a starting point, but partnerships are needed with community-based organizations, with educational systems, with employers, with businesses.”<sup>270</sup>

The Task Force indicates the importance of law enforcement agencies to “engage in multidisciplinary, community team approaches for planning, implementing, and responding to crisis situations with complex causal factors.”<sup>271</sup> Dr. Porter affirmed this recommendation by suggesting departments “[explore] alternative roles for police at the nexus where law enforcement and social services meet.”<sup>272</sup> In order to implement the most impactful programs, Dr. Densley encouraged “partnerships between researchers and the law enforcement agencies [that] champion program evaluation and evidence-based practices.”<sup>273</sup> As an example of one way Minneapolis is addressing “complex causal factors”, Mr. Zahn outlined the Minneapolis Downtown Improvement District’s (DID) broad partnership within the Chronic Offender Program and the holistic approach to addressing issues impacting formerly incarcerated individuals with “livability issues”, such as “chemical dependency” and “housing.”<sup>274</sup> Mr. Feist discussed the relevance of these “livability issues” to law enforcement indicating that many “of the low level charges that we were seeing through this report had a connection to issues of being homeless and poverty in Minneapolis.”<sup>275</sup> Mr. Zahn highlighted that the DID has broadly collaborated with impacted community experts to best address these complex issues. For example, the DID hired Youth Coordinating Board and Youth Link to conduct “homeless street outreach.”<sup>276</sup> The peer outreach workers hired have experienced homelessness in some capacity and therefore have expertise in supporting this population.<sup>277</sup> As previously mentioned, the St. Paul Police Department has partnered with Ramsey County mental health crisis line to divert 911 calls that may be more appropriate for a mental health professional.<sup>278</sup> Chief Axtell elaborated that the SPPD is “looking for funding opportunities so that we can partner up mental health professionals with officers who are responding to calls for service where we know mental health is an issue.”<sup>279</sup> According to the Minnesota Daily, the Minneapolis Police Department mirrored this “co-responder” program in a 2016 pilot program in which “mental health professionals ride along with Minneapolis Police Department officers for calls involving people with mental

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<sup>269</sup> Transcript (statement by Stuart) at 221.

<sup>270</sup> Transcript (statement by Ruhland) at 66.

<sup>271</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 44.

<sup>272</sup> Transcript (statement by Porter) at 113.

<sup>273</sup> Transcript (statement by James Densley) at 52.

<sup>274</sup> Transcript (statement by Zahn) at 97-98.

<sup>275</sup> Transcript (statement by Feist) at 86.

<sup>276</sup> Transcript (statement by Zahn) at 97.

<sup>277</sup> *Id.* at 97.

<sup>278</sup> Transcript (statement by Axtell) at 272-273.

<sup>279</sup> *Id.* at 273.

illness.”<sup>280</sup> These partnerships are one way of limiting the scope of responsibilities for officers allowing them to focus their efforts on law enforcement expertise.

#### 4. *Community-based Initiatives*

The Task Force acknowledges in the introduction that, “Building trust and legitimacy, therefore, is not just a policing issue. It involves all components of the criminal justice system and is inextricably bound to the bedrock issues affecting the community such as poverty, education, and public health.”<sup>281</sup> This recognition that the core-issues extend beyond policing was mirrored in the testimony heard at the Minnesota hearing. Officer Ferraro mentioned, “One of the other focus issues that we need to do as a society, not just the police department but as a society, one of the focus issues could also be poverty and income. On the East Side, that’s a huge issue, and we, as police officers, we see it on every single we call that we go to. And those are very important issues for the inner city.”<sup>282</sup> There was significant testimony indicating that issues were outside the scope of police. Dr. Ruhland discussed the, “lack of education opportunities and the lack of educational and employment opportunities in their community. The lack of opportunities caused individuals to be involved in criminal activities, and the results of collateral consequences that result from criminal records, often led people to sell drugs or to commit theft because they could not find legitimate income to support their needs.”<sup>283</sup> Chief Axtell that many of these issues are not the responsibility of the police, “There is disproportionality in education, economics, health care, housing, and I could go on and on and on. And to put all the pressure on that one spoke to fix all of society’s proportionality is absolutely unfair, but I also understand that we have a role to play in helping that wheel.”<sup>284</sup> Similarly, Mr. Terrell suggested that, “These are not police issues, so if you want to talk about coming up to help with drugs and how drugs are sweeping through our community and causing all kinds of problems, that’s a public health issue or an economic issue. You’re talking about a black market trade that if those folks had an opportunity for fair market employment opportunities those folks would not be committing crimes...So a lot of these are economic problems or housing problems, employment problems, public health problems. None of these issues can be solved by policing.”<sup>285</sup> He followed up to suggest that since these challenges exist outside of the realm of policing, perhaps resources should be reinvested into the community.<sup>286</sup> Ms. Weli supported this suggestion indicating community investment was essential to addressing core issues such as poverty.<sup>287</sup>

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<sup>280</sup> Layna Darling, *Minneapolis Police Department to partner with mental health professionals in new pilot program*, Minnesota Daily, Sept. 6, 2016, <http://www.mndaily.com/article/2016/09/mpd-ridealong-mental-health> (last accessed May 31, 2017).

<sup>281</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 5.

<sup>282</sup> Transcript (statement by Ferraro) at 257-258.

<sup>283</sup> Transcript (statement by Ruhland) at 58.

<sup>284</sup> Transcript (statement by Axtell) at 260.

<sup>285</sup> Transcript (statement by Terrell) at 105-106.

<sup>286</sup> *Id.* at 108.

<sup>287</sup> Transcript (statement by Weli) at 182.

## **E. Pillar 5: Training & Education**

### ***1. Training***

The Task Force suggests that “as our nation becomes more pluralistic and the scope of law enforcements responsibilities expands, the need for more and better training has become critical.”<sup>288</sup> The report goes on to specifically recommend that Peace Officer Standards and Training (POST) includes mandatory CIT training, instruction in disease of addiction, implicit bias, cultural responsiveness, policing in a democratic society, procedural justice, and effective social interaction and tactical skills.<sup>289</sup> The Committee heard testimony calling for training, particularly around issues of implicit bias. Chief Harteau, Sheriff Stuart, and Chief Axtell all indicated that all of their officers are exposed to CIT and implicit bias training.<sup>290</sup> It is encouraging that these departments are committed to these trainings, however Dr. Densley pointed out that, “the terms implicit bias and procedural justice are entirely absent from the 2017 update [to the Professional Peace Officer Education Program (PPOE)] and the objectives say things like discuss crisis intervention, not actually practice it.”<sup>291</sup>

Dr. Borgida presented the Committee with the leading research examining the impacts of implicit bias training. Currently, research indicates that implicit bias training can be extremely effective in the short-term, however the issue is that it does not have lasting effects. Dr. Borgida indicated that implicit bias is very difficult to change and it is worth further exploration to determine whether more intensive ongoing training could be more effective in long-term implicit bias remediation.<sup>292</sup> While the Committee heard testimony lauding the importance of training, Dr. Sole suggested that training was not a catch all and that, “some people can’t be trained. It’s not a silver bullet. Some of these things will help and change the system on some levels but we got to understand what we’re up against.”<sup>293</sup> Dr. Borgida’s testimony supported this claim indicating that officers would need to be receptive to implicit bias training for it to be impactful.<sup>294</sup>

Other panelists were more optimistic about the impact of implicit bias training. Mr. Feist proposed implicit bias training and other trainings as corrective action for disparate policing practices.<sup>295</sup> Similarly, Roxanne Anderson said, “I would go for implicit bias training by and for those folks that are affected.”<sup>296</sup> Ms. Baxter suggested that one way to make implicit bias training more effective is to encourage officers to reflect on times in their own lives when they

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<sup>288</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 51.

<sup>289</sup> *Id.*

<sup>290</sup> Transcript (statement by Harteau) at 199; (statement by Stuart) at 217; (statement by Axtell) at 253.

<sup>291</sup> Transcript (statement by Densley) at 45.

<sup>292</sup> Transcript (statement by Borgida) at 17; 38.

<sup>293</sup> Transcript (statement by Sole) at 164.

<sup>294</sup> Transcript (statement by Borgida) at 17;38.

<sup>295</sup> Transcript (statement by Feist) at 88.

<sup>296</sup> Transcript (statement by Anderson) at 108.

may have broken the law and to consider how their lives could have turned out differently had they been caught.<sup>297</sup> According to Baxter, “if we can inject some of that introspection and humility and true consideration of one’s privilege, then I think we can begin to uncover implicit bias, and we begin to truly see one another as human beings.”<sup>298</sup>

In addition to increasing the quantity and quality of officer training, the Task Force also recommends that law enforcement agencies “engage community members, particularly those with special expertise, in the training process and provide leadership training to all personnel throughout their careers.”<sup>299</sup> As one example of what this might look like, Dr. Keesee testified that the NYPD has in recent years adopted numerous policies aimed at increasing community engagement, including incorporating community input into its officer training curriculum, inviting members of the public to observe officer training courses, and establishing a Citizens Academy where civilians can take courses on policing practices and what it means to be a police officer.<sup>300</sup> In Minnesota, some police departments have begun to make similar efforts. Chief Harteau testified that the Minneapolis Police Department is working to involve members of the community in its procedural justice training.<sup>301</sup> While such programs represent a good start, Chief Harteau stressed that greater community engagement is necessary throughout the training process. For Harteau, at its core, community engagement is about “having a voice and being respectful. We need to make sure that we do that with our officers and we do that with the community.”<sup>302</sup>

## 2. *Selection Methods*

Minnesota is currently the only state in the United States in which colleges and universities educate and train police officers rather than police academies. Therefore in order to become a licensed Minnesota Peace Officer, an individual must earn at least a two-year degree from an accredited college or university.<sup>303</sup> Dr. Densley suggests that, “there are problems inherent in that system. Problems related to what economists call adverse selection.”<sup>304</sup> Dr. Densley indicated that there is high cost and high risk for an officer entering one of these programs. These programs are tailored to law enforcement in Minnesota *only*, they are at least 2 years long and cost between \$15,000 and \$100,000, all of this, “with no guarantee of a job at the end.”<sup>305</sup> Because of the risk and requisites to becoming a Minnesota police officer, Dr. Densley contends that, “the vast majority of law enforcement students are people that have always wanted to be cops. People attracted to a mythologized version of policing. People who grew up around cops,

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<sup>297</sup> Transcript (statement by Baxter) at 75.

<sup>298</sup> *Id.* at 76-77.

<sup>299</sup> President’s Task Force on 21<sup>st</sup> Century Policing.

<sup>300</sup> Transcript (statement by Keesee) at 77-79.

<sup>301</sup> Transcript (statement by Harteau) at 199-200.

<sup>302</sup> *Id.* at 199-200.

<sup>303</sup> Transcript (statement by Densley) at 41-42.

<sup>304</sup> *Id.* at 42.

<sup>305</sup> *Id.*

as family and friends. People who, research will tell us, tend to be more conservative, tend to have more authoritarian or socially dominant personalities.”<sup>306</sup> Furthermore, Dr. Densley pointed out that the “high financial and opportunity costs” discourage “low income and second-career candidates, not to mention the historical and cultural barriers of entry for women and black or minority ethnic candidates.”<sup>307</sup>

### 3. *Quality of Education*

The Task Force indicates that “undergraduate criminal justice and criminology programs provide a serviceable foundation but that short courses of mixed quality and even some graduate university degree programs do not come close to addressing the needs of 21<sup>st</sup> century law enforcement.”<sup>308</sup> The Committee heard testimony critical of the quality of education officers are receiving in Minnesota. Dr. Densley explained:

The POST board establishes the learning objectives for PPOE. Colleges and universities are certified by the POST board to provide education leading to the licensures, and they must incorporate those learning objectives into their curriculum. In 2011 there were 150 learning objectives. In the most recent revision, 2017 there were approximately 500...how the 500 learning objectives are met is at the discretion of the individual colleges and universities...all colleges and universities have to do to appease the POST board is demonstrate that each of these learning objectives is met at least once in the course of the curriculum. They do this by checking the boxes on a course matrix. The emphasis here is on the quantity of the coverage, not its quality.<sup>309</sup>

According to Dr. Densley, officers in Minnesota receive instruction from associate programs, part-time or practitioner faculty, and receive credit for life experience, military, or professional training at much higher rates than are permitted by the standards established by the Academy of Criminal Justice Sciences.<sup>310</sup> Dr. Densley said “I can’t think of one college or university in the State of Minnesota that would meet rigorous [Academy of Criminal Justice Sciences] certification standards.”<sup>311</sup> Potential evidence of this inadequate education is that fewer than half of all PPOE graduates secure a position as a police officer in Minnesota.<sup>312</sup>

Not only did Dr. Densley contend that officer education is subpar, he also outlined ways in which education may be directly contributing to poor police and community relations. He

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<sup>306</sup> *Id.* at 43.

<sup>307</sup> *Id.*

<sup>308</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 51.

<sup>309</sup> Transcript (statement by Densley) at 44-46. *Note: Original testimony stated approximately 600 current POST learning objectives. This was corrected by the panelist in an email to the Committee, 12/13/17 to reflect approximately 500 current POST learning objectives.*

<sup>310</sup> Transcript (statement by Densley) at 46-47.

<sup>311</sup> *Id.* at 49.

<sup>312</sup> *Id.* at 51.

pointed out that, “some programs are almost entirely online...So imagine, students learning community policing without ever stepping foot into a physical community.”<sup>313</sup> Dr. Densley further emphasized student unpreparedness, “PPOE students in this state learn to drive in unplugged Ford Crown Victoria Police Interceptors. Once hired, however, they then end up driving supercharged Dodge Chargers.”<sup>314</sup> Finally, Dr. Densley highlighted the “immersive paramilitary experience” students encounter. “It is during skills, for example, that officers learn about Tasers. They are physically tased as part of this process. Students literally line up and take turns to ride the lightning...this is tantamount to hazing, it’s the vestiges of a violent police culture...this is where that implicit bias, brutality and everything else, kind of incubates it.”<sup>315</sup>

Variability was a major issue proposed by Dr. Densley both in the education of Minnesota police officers as well as in the selection of officers. Dr. Densley indicated that there are, “approximately 30 different colleges and universities offering PPEO. There is a ton of duplication of effort, but also variability.”<sup>316</sup> It is challenging to ensure quality of education if there is such variability between programs. Furthermore, Densley articulated that, “It is the individual law enforcement agencies—and there are 448 of them in the State of Minnesota, each with their own culture and hiring practices—who control who get licensed and who stays licensed.”<sup>317</sup> Dr. Densley is suggesting that due to number of law enforcement agencies in Minnesota, the inevitable variability could impact the integrity of officer quality.

Despite his critique, Dr. Densley nevertheless indicated that, with the appropriate reforms, he believes college requirements can serve a beneficial purpose. He suggested, “What I believe in...its kind of how the FBI do it, which is you would still have a requirement to have a four year college degree. It could be in any discipline and subject, and then there would be these sort of training academies that would then take those graduates both into the program.”<sup>318</sup> He supports this qualification, in part, because it necessarily requires that officers are older and likely more mature.<sup>319</sup> He acknowledged the financial barrier to this requirement and suggested state funding, and scholarships to alleviate this financial barrier.<sup>320</sup> More generally, Dr. Densley recommended that universities rethink how they approach officer education by, for example, working to “promote partnerships between researchers and the law enforcement agencies, champion program evaluation and evidence-based practices, [and] provide a safe space to explore empathy, implicit bias, procedural justice, de-escalation” and other relevant topics.”<sup>321</sup>

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<sup>313</sup> Transcript (statement by Densley) at 46.

<sup>314</sup> *Id.* at 47.

<sup>315</sup> *Id.* at 48 -49.

<sup>316</sup> *Id.*

<sup>317</sup> *Id.* at 51.

<sup>318</sup> *Id.* at 71.

<sup>319</sup> *Id.* at 73.

<sup>320</sup> *Id.* at 72.

<sup>321</sup> *Id.* at 52.

## **F. Pillar 6: Officer Wellness & Safety**

The Task Force argues “The wellness and safety of law enforcement officers is critical not only for officers, their colleagues, their agencies, but also to public safety.”<sup>322</sup> The Committee heard little testimony about officer wellness and safety, which is not surprising due the stigma associated with mental illness within police culture. However it is an important conversation, according to the Task Force, “police died from suicide 2.4 times as often as from homicide.”<sup>323</sup> However, along with stigma, officers are also reticent to express challenges with mental health out of fear of termination.<sup>324</sup> Officers who ask for psychological assistance are at risk of facing duty restrictions which can serve as a deterrence to officers seeking support.

Chief Harteau spoke briefly about officer health and safety by saying, “MPD self-care. I just want to mention this briefly. We do know that members of our community certainly that are exposed to violence and trauma and we see repeat cycles of violence because of that, but our officers too have been exposed to trauma, and we’re doing resiliency and self-care for officers. We have to take care of them. People don’t want to talk about that a lot, but that is the key need. We can’t just hire the right people, we have to ensure they’re also going to take care of an aging department.”<sup>325</sup> “Our officers have seen a lot of violence over their careers, they have seen a lot of things, and they don’t send them home when they see those. When you see a baby die, or you see a murder in the street, they don’t go home, they go to the next call. We need take care of them. Because when you look back into history, and you look back into uses of force, oftentimes those that use force have more history of brute force and exposure.”<sup>326</sup>

Chief Harteau identified that officer wellness is directly tied to community safety—indicating exposure to violence may be related to future use of force incidents. According to the National Center for Biotechnology Information (NCBI) “The incidence of current duty-related PTSD in police officers has been found to vary between 7% and 19%.”<sup>327</sup> According to the Mayo Clinic, the major symptoms of PTSD include 1)Intrusive memories 2)Avoidance 3)Negative changes in thinking and mood 4)Changes in physical and emotional reactions.<sup>328</sup> Each of these symptoms has the possibility of impeding healthy relationships between law enforcement and the police.

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<sup>322</sup> President’s Task Force on 21<sup>st</sup> Century Policing at 61.

<sup>323</sup> *Id.*

<sup>324</sup> Althea Olson & Mike Wasilewski, *Suffering in silence: Mental health and stigma in policing*, PoliceOne.com, Sept. 7, 2016, <https://www.policeone.com/police-products/human-resources/articles/218917006-Suffering-in-silence-Mental-health-and-stigma-in-policing/> (last accessed May 31, 2017).

<sup>325</sup> Transcript (statement by Harteau) at 209.

<sup>326</sup> *Id.* at 210.

<sup>327</sup> Shira Maguen, Thomas Metzler, Shannon McCaslin, Sabra Inslicht, Clare Henn-Haase, Thomas Neylan & Charles Marmar, *Routine Work Environment Stress and PTSD Symptoms in Police Officers*, U.S. National Library of Medicine, National Institute of Health, 2009, 197(10) at 754-760, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3974929/> (last accessed May 31, 2017).

<sup>328</sup> Mayo Clinic Staff, *Post-traumatic stress disorder: symptoms and causes*, Mayo Clinic <http://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/symptoms-causes/dxc-20308550> (last accessed May 31, 2017).

While law enforcement panelists did not readily discuss “officer mental health” per say, they did refer to diminishing officer morale in light of recent public crisis incidents. Dr. Ruhland reported that officers believe that community members have an unfair view of the police and reported being labeled as racists based on the actions of a few.<sup>329</sup> This perspective came up repeatedly throughout testimony from police officers. Chief Axtell said, “Morale does take a hit when there is a broad brush narrative that gets painted upon all police officers that wear the uniform., because sometimes we, whether it’s the media or community, doesn’t understand...that whether we’re wearing this uniform or not, we’re humans. We have our own life experiences. We’ve had ups and downs in our lives. We have family members.”<sup>330</sup> Officer Ferraro elaborated on the significance of high morale, “It’s important for us to try to improve our morale so that we feel like we can be the best officers that we possibly can be, because if our morale is a little bit lower, then what type of service are we going to provide to our community?”<sup>331</sup> Along with impacting the day-to-day work of police, it was suggested that low morale had greater impact on law enforcement in general. As mentioned earlier, Sheriff Stuart indicated, “Our protectors feel the strain of that broad brush that officers are sometimes painted. Interest in criminal justice and law enforcement fields are already declining. The criminal justice programs in the colleges have seen a decline in enrollees in law enforcement across our entire nation, including my own have experienced dramatic declines in our applicant pools.”<sup>332</sup> There does seem to be some evidence to say that the applicant pool is decreasing According to Uniform Crime Reporting Programme data published by the FBI the ratio of police officers to population was its lowest since 1997 and individual cities have complained of decreases in applications.<sup>333</sup>

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<sup>329</sup> Transcript (statement by Ruhland) at 63.

<sup>330</sup> Transcript (statement by Axtell) at 259.

<sup>331</sup> Transcript (statement by Ferraro) at 262.

<sup>332</sup> Transcript (statement by Stuart) at 220.

<sup>333</sup> *Police departments struggle to recruit enough officers*, The Economist, Jan. 5, 2017,

<http://www.economist.com/news/united-states/21713898-stronger-economy-partly-blame-police-departments-struggle-recruit-enough> (last accessed May 31, 2017).

## **V. FINDINGS AND RECOMMENDATIONS**

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.<sup>334</sup> Below, the Minnesota Advisory Committee offers to the Commission a summary of concerns regarding racial disparities in the use of force and police and community relations more broadly. Following these findings, the Committee proposes for the Commission's consideration several recommendations that apply both to Minnesota and to the nation as whole.

### **a. Findings**

1. Improving interactions between law enforcement and communities of color requires building trust on both sides of the police-civilian divide.

1.1 Many people of color experience historical trauma stemming from the racist legacy of slave patrols and Jim Crow era policing practices. When unaddressed, this trauma can serve as an impediment to the development of trusting relationships between communities of color and law enforcement.

1.2 Current police practices contribute to the lack of trust between people of color and the police. People of color often report feeling that the police instinctively regard them as criminals and are not concerned about their protection. This lack of trust is mirrored by law enforcement personnel, many of whom are fearful and distrustful of the communities they are assigned to protect.

1.3 Procedural justice is essential for establishing trusting relationships between communities of color and law enforcement. Research suggests that people are more likely to regard an outcome as just when it is arrived at transparently and in a manner that respects the dignity of everyone involved.

1.4 Many police officers harbor implicit biases against people of color. These biases lead to a disproportionate number of interactions between people of color and police, which in turn creates an "us versus them" mentality that erodes trust between communities of color and law enforcement.

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<sup>334</sup> 45 C.F.R. § 703.2

1.5 Police officers in Minnesota increasingly do not live in the communities they are assigned to protect. Several panelists expressed concern that, without a vested interest in the community, police officers are more likely to view the areas where they work as “war zones.”

1.6 Despite efforts to increase diversity, people of color, and blacks in particular, remain underrepresented in many Minnesota police departments.

1.7 Federal laws allowing local law enforcement to cooperate with federal immigration officers have led many immigrants and those living in immigrant communities to avoid interacting with local police out of fear that they will be deported or subjected to immigration proceedings.

2. Collecting and maintaining thorough and accurate data on police department practices – including hiring practices, officer demographics, and interactions between police and citizens – increases transparency and helps foster trusting relationships between communities of color and law enforcement.

2.1 Although some police departments in Minnesota have begun to make improvements in data collection, the variability in how departments collect and distribute data makes it difficult to accurately assess and compare policing practices across the state.

2.2 To be effective, police department policies on use of force must be clear, consistent, and based on reliable data. These policies should be reflective of community values and geared toward deescalating potentially violent situations, particularly those involving mass protests or individuals who may be suffering from mental illness.

2.3 Perceived and actual internal accountability is imperative to building trust between the community and law enforcement, yet many police officers remain unwilling to report misconduct committed by their fellow officers. Even when misconduct is reported, arbitration proceedings and police union contracts often make it difficult to terminate or discipline officers who violate department policies.

2.4 Civilian oversight of law enforcement can serve to both increase trust between communities and law enforcement, as well as to formalize accountability. However, in Minnesota the scope of civilian oversight is limited by a Minnesota state law prohibiting civilian review boards from making factual findings regarding complaints against officers or from imposing disciplinary measures. These restrictions have prompted many civilian review board members to complain that they are unable to effectively address instances of police misconduct.

3. New technology has drastically changed policing practices, but there is considerable debate among law enforcement and the community about whether these changes have been positive or negative.

- 3.1 Research on use of body-worn cameras (BWCs) by police suggests that they can significantly reduce both officer use of force and complaints against officers. In Minnesota, however, only a small percentage of police departments employ BWCs. Of those that do, the lack of standards governing their use has raised concerns among members of the community that police are using BWCs primarily for surveillance purposes, rather than as a measure to ensure officer accountability.

- 3.2 Although social media can be an effective tool for police to communicate with the community and receive feedback regarding department policies and practices, there is concern among the law enforcement community that social media is actually impairing relationships between the police and the community. The “Ferguson Effect”, named after the 2014 shooting of an unarmed black teenager in Ferguson, Missouri, refers to what many police officers perceive to be social media’s tendency to spread misinformation and place undue scrutiny on interactions between civilians and police. FBI research indicates that Ferguson Effect may be causing officers to police less aggressively than they normally would out of fear of attracting negative media attention.

4. Community policing practices can assist officers in proactively identifying and addressing public safety challenges before the need for criminal enforcement arises, thereby reducing instances of tense and potentially violent encounters between law enforcement and the community.

- 4.1 In recent years, police departments in Minnesota have implemented a number of community policing practices aimed at promoting positive relationships between the community and law enforcement. Despite these efforts, many Minnesota residents indicate that they would like to see an even greater focus placed on community policing.

- 4.2 Community policing can serve as an effective alternative to “broken windows” or “hot spot” policing. By singling out low income, primarily minority neighborhoods for increased enforcement of low level offenses, broken windows and hot spot policing often erode trust between law enforcement and communities of color.

- 4.3 Community policing requires collaborative partnerships between law enforcement and community organizations in order to be most effective. These partnerships should be tailored to meet the specific needs of the community being served, with a focus on addressing the complex causal factors – such as chemical dependency and homelessness – that directly and indirectly lead to criminal activity.

4.4 Even with effective community policing programs, many of the societal factors that lead to crime are beyond the scope of what police are able to address. Issues regarding poverty, disparities in quality of education and lack of job opportunities cannot be remedied without the assistance of the community as a whole.

5. As the role of police officers in society continues to expand, it is more important than ever they receive extensive, consistent training in skills ranging from crisis intervention to cultural sensitivity.

5.1 In Minnesota, there have been calls from both law enforcement personnel and members of the community to expand police training on how to identify and respond to instances of implicit bias. However, as it is currently practiced, implicit bias training has not been shown to be effective at combatting implicit biases in the long-term and may not be effective at all for officers who are not receptive to it.

5.2 Minnesota is currently the only state in which colleges and universities educate and train police officers rather than police academies. In order to become a licensed Minnesota police officer, an individual must earn at least a two-year degree from an accredited college or university. These programs can be prohibitively expensive, and there is no guarantee that they will lead to a job. As a result, many low income and minority individuals are financially unable to pursue careers in law enforcement.

5.3 Many undergraduate criminal justice and criminology programs in Minnesota do not adequately prepare officers for the day-to-day realities of policing. These programs often have standards significantly lower than those established by the Academy of Criminal Justice Sciences, and some are almost entirely online, meaning that many graduates will enter the police force without ever having set foot in the community they have been assigned to protect.

6. The mental and physical health of police officers is an often overlooked factor in developing positive relationships between law enforcement and the community. Although police officers are 2.4 times more likely to die from suicide than from homicide, many officers are reluctant to seek psychological assistance due to the stigma associated with mental illness within police culture. This reluctance is particularly troubling given that research indicates that officers who suffer from untreated emotional trauma are more likely to engage in use of force.

## **b. Recommendations**

1. The U.S. Commission on Civil Rights should issue a formal recommendation to the Governor's Council on Law Enforcement and Community Relations, the Minnesota Board of Peace Officer Standards and Training, and the Minnesota Chiefs of Police Association to integrate community policing activities into all officer performance evaluation systems.
  
2. The U.S. Commission on Civil Rights should issue the following formal recommendations to the Office of the Governor, Minnesota State Legislature, and League of Minnesota Cities urging them to:
  - a. Encourage problem-oriented policing and creative problem solving among officers, analysts, and community members as a way to identify the root causes of problems and potential solutions.
  
  - b. Collaborate with a wide range of community partners, above and beyond active resident groups.
  
  - c. Support systematic and standardized approaches to problem solving, such as the development of Law Enforcement Assisted Diversion (LEAD) programs. Such programs foster collaboration among law enforcement and community members to address unmet public health and human services needs that often underlie issues of public order.
  
3. The U.S. Commission on Civil Rights should issue a formal recommendation urging the Minnesota State Legislature, Minnesota Board of Peace Officer Standards and Training, and League of Minnesota Cities to create more effective policies regarding the training and proper use of tasers, chemical irritants, and other lethal and less-lethal weapons.
  
4. The U.S. Commission on Civil Rights should issue a formal recommendation to the Office of the Governor, League of Minnesota Cities, and local police agencies urging them to 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.
  
5. The U.S. Commission on Civil Rights should issue the following formal recommendations to the Office of the Governor, Minnesota Board of Peace Officer Standards and Training, Minnesota Chiefs of Police Association, League of Minnesota Cities, all Minnesota police labor organizations, and all locally elected officials:

- a. 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.
  - b. All personnel should receive training regarding best practices in community policing, not just assigned “community operatives.”
  - c. Department leadership should demonstrate a sustained and meaningful commitment to the community policing philosophy to increase officer buy-in and participation.
  - d. 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.
6. The U.S. Commission on Civil Rights should issue the following formal recommendations to all Minnesota policing agencies urging them to:
- a. Use social media in a positive way by improving department websites that provide information about crime alerts (e.g., Minneapolis Police Department).
  - b. 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.
7. The U.S. Commission on Civil Rights should issue the following formal recommendations to the Office of the Governor and League of Minnesota Cities:
- a. 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.
  - b. 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).
  - c. 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.
  - d. 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.

8. The U.S. Commission on Civil Rights should issue a formal recommendation to the Office of the Governor, the Minnesota State Legislature, and League of Minnesota Cities urging them to explore and promote effective methods that increase the percentage of officers who reside in the communities in which they serve.
9. The U.S. Commission on Civil Rights should issue a formal request to the U.S. Department of Justice to establish a task force in order to continue the research conducted by the President's Task Force on 21<sup>st</sup> 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.
10. The U.S. Commission on Civil Rights should issue a formal recommendation to the Office of the Governor, Minnesota State Legislature, League of Minnesota Cities, and all locally elected officials urging them to create structures that ensure effective and legitimate civilian oversight of alleged police misconduct. Such structures should promote transparency, strengthen accountability, and build community trust.
11. The U.S. Commission on Civil Rights should issue a formal recommendation to the Office of the Governor, Minnesota State Legislature, League of Minnesota Cities, and all locally elected officials urging police agencies to 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.
12. The U.S. Commission on Civil Rights should issue a formal recommendation to the Office of the Governor, the Minnesota State Legislature, and Minnesota Chiefs of Police Association urging them to adopt policies that clearly and firmly delineate relationships between local police agencies and federal agencies with respect to the enforcement of civil immigration laws.
13. 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.

**VI. APPENDIX**

- A. Hearing Agenda, March 21, 2017
- B. Written Testimony
  - 1. Gross
  - 2. RAZAN
  - 3. Turchick
- C. Committee Statements

# U.S. COMMISSION ON CIVIL RIGHTS



## Civil Rights and Police Practices in Minnesota

### Hosted By:

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

### Date:

Tuesday March 21, 2017

### Time:

8:00 a.m.—5:15 p.m.

### Location:

Frey Moot Courtroom  
University of St. Thomas  
Minnesota School of Law

1000 LaSalle Avenue,  
Minneapolis, MN 55403

### U.S. COMMISSION ON CIVIL RIGHTS

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The Minnesota Advisory Committee to the United States Commission on Civil Rights is hosting a public meeting to hear testimony regarding civil rights concerns related to policing in the State. This meeting is free and open to the public.

### Agenda:

- *Opening Remarks and Introductions (8:00am-8:15am)*
  - *Panel 1: Academic (8:15am-9:30am)*
  - *Panel 2: Community I (9:45am-11:00am)*
  - *Panel 3: Community II (11:15am-12:30pm)*
- *Break (12:30pm-1:15pm)*
  - *Panel 4: Law Enforcement I (1:15pm-2:00pm)*
  - *Panel 5: Law Enforcement II (2:05pm-3:00pm)*
  - *Panel 6: Policy-Makers/Judiciary (3:10pm-4:20pm)*
  - *Open Forum (4:20pm-5:00pm)*
- *Closing Remarks (5:00pm-5:15pm)*

The Committee will hear public testimony during the open forum session, as time allows. Please arrive early if you wish to speak. The record is also open for written testimony and will remain so for thirty days following the hearing. For more information please contact the Midwestern Regional Office of the U.S. Commission on Civil Rights.

*State Advisory Committees to the U.S. Commission on Civil Rights are composed of state citizens who serve without compensation. The Committees advise the Commission of civil rights issues in their states, providing recommendations and advice regarding such matters to the Commission.*

# AGENDA

## Opening Remarks and Introductions (8:00am-8:15am)

Velma Korbel, Chair, Minnesota Advisory Committee  
Commissioner Karen K. Narasaki, U.S. Commission on Civil Rights

### MORNING SESSION

#### Academic Panel (8:15am—9:30am)

Dr. Tracie Keese, Deputy Commissioner of  
Training NYPD

Emily Baxter, We Are All Criminals

Dr. James Densley, Metropolitan State University,  
Criminal Justice Department

Dr. Ebony Ruhland, Robina Institute

#### Community Panel I (9:45am—11:00am)

Ben Feist, ACLU of Minnesota

Shane Zahn, Minneapolis Downtown  
Improvement District

Justin Terrell, Take Action MN

Dr. Louis Porter II, Council for Minnesotans of  
African Heritage

Vina Kay, Voices for Racial Justice

#### Community Panel II (11:15am-12:30pm)

Henry Jimenez, Minnesota Council on Latino  
Affairs

Roxanne Anderson, OutFront

Robert Lilligren, Native American Community  
Development Institute

Fartun Weli, Isuroon

Jason Sole, NAACP

**Break (12:30pm-1:15pm)**

### AFTERNOON SESSION

#### Law Enforcement Panel I (1:15pm-2:00pm)

Chief Janee Harteau, Minneapolis Police  
Department

Bob Kroll, Police Officer's Federation of  
Minneapolis

Sheriff James Stuart, Anoka County Sheriff's  
Office

#### Law Enforcement Panel II (2:05pm-3:00pm)

Sheriff Richard Stanek, Hennepin County

Michael Gallagher, Bloomington Police Officer's  
Federation

Chief Todd Axtell, St. Paul Police Department

Officer Lou Ferraro, St. Paul Police Department

#### Policy-Makers/Judiciary Panel (3:10pm-4:20pm)

Dr. Gene Borgida, University of Minnesota, Law  
and Psychology Departments

Mark Kappelhoff, Former Deputy Assistant  
Attorney General, Civil Rights Division, DOJ

Barbara Johnson, Minneapolis City Council

Andrea Brown, Police Conduct Oversight  
Commission and Ramsey County Public Defender

**Open Forum (4:20pm-5:00pm)**

**Closing Remarks (5:00pm)**

**Written Testimony to the US Civil Rights Commission  
On Civil Rights and Police Practices in Minnesota**

**Presented by Communities United Against Police Brutality**

**April 18, 2017**

This testimony is provided in response to an effort by the US Civil Rights Commission to assess the efficacy of measures to improve police practices in the State of Minnesota, especially as relates to disparate impact based on race, color, age, religion or disability.

**Introduction**

Communities United Against Police Brutality (CUAPB) is a Twin Cities-based organization working to end brutality, misconduct, and abuse of authority by police. We provide support and advocacy for people dealing with the effects of police brutality so they can reclaim their dignity and attain justice. We engage in political activities and litigation to change the policies and customs that lead to police abuses. We educate the community on their rights, interacting safely with police, documenting police conduct, and on specific policing issues. Despite being a local organization, we are internationally known for our work, which includes creating a national movement to require police officers to carry professional liability insurance.

**Concerns Regarding Process**

The stated purpose of the March 21, 2017 meeting was to collect information on the adoption and impact of recommendations outlined in the President's Taskforce on 21<sup>st</sup> Century Policing Implementation Guide<sup>1</sup> in the state of Minnesota. However, missteps in the process preclude the ability to achieve this goal in a meaningful way.

This process appears to be driven by Minneapolis city officials, particularly leadership within the city's Civil Rights Department. While city officials need to be at the table, they seem to have determined the other participants at this event. City officials are incentivized to select participants that will validate the current state. Thus, the process is skewed to create the appearance that policing in the Twin Cities is better than it actually is and that more progress has been made than is true.

Public notification of the March 21 meeting was wholly inadequate. Given the importance of this meeting and its stated goal, it should have been advertised widely, including via the city's website, social media pages and through mainstream media. None of these means were used to inform and attract the community at large. This lack of notification gives every appearance of attempting to limit public input. Members of our organization literally learned about this meeting by accident.

In addition, it appears that the only way for members of the public to learn about the opportunity to submit written testimony was through attending this poorly publicized meeting. Consequently, your commission will likely receive very limited input from the communities most severely impacted by policing issues in the Twin Cities.

The Implementation Guide<sup>2</sup> includes the advice “Pay attention to the process of planning, and engage all relevant constituent groups—from labor unions and student groups to faith leaders and neighborhood associations—in the process of planning design. Leadership can circumvent a number of problems or challenges by being transparent and inclusive of stakeholders in all phases of the planning process.” Minneapolis city staff clearly failed to heed this advice.

This is not altogether surprising as the Implementation Guide—indeed, the Task Force itself—fails to recognize police accountability organizations as key stakeholders, separate from the community as a whole.<sup>3</sup> Just as the March 21 meeting failed to include any organizations whose sole purpose is police accountability, the Task Force itself excluded all such organizations.

Finally, it is unclear if other Minnesota communities will be hosting similar hearings from the US Civil Rights Commission. Policing issues in other communities vary significantly from issues in the Twin Cities. In particular, the Duluth Police Department has a long history of abuses against American Indian people and Latino residents of St. Cloud have serious concerns about treatment by the Stearns County Sheriff’s Department as well as the St. Cloud Police Department.

### **Problems with Framing**

According to the Implementation Guide, the President’s Task Force on 21<sup>st</sup> Century Policing “created a road map for the future of policing and provides clear direction on how to **build trust with the public.**”<sup>4</sup> [Emphasis ours.] The first “pillar” of task force recommendations is titled “Building Trust and Legitimacy.”<sup>5</sup>

***The problem is, this is a false framing of the issue.*** This, like so many other reform efforts, centers on improving “police-community relations.” This framing proposes that if police and the community could somehow just get along better, trust would be built and the problem would be solved. This framing places half the responsibility for the problem on the community, when we have little control over police conduct and the violation of our rights—and bodies—with impunity.

Another problem with this framing is that the goal emphasizes addressing past abuses, ignoring ongoing abuses that are not being effectively addressed. Thus, the abuses continue and undermine the ability of recommendations in the Implementation Guide to have the desired impact.

Both historically and more recently, the function of policing has been to enforce bias and reinforce disparate treatment. Police brutality, misconduct and abuse of authority exist because they are functional for some segments of society. Efforts that focus on “building trust” are doomed to failure because they don’t address the underlying cause of the problem.

We need to be clear—the issue is police abuse of authority, the oppression that underpins it, and the lack of accountability that encourages it. No amount of “dialogue” or other “relationship-building” measures will improve this because “relationships” aren’t the underlying cause of the problem. We reject the proposition that it is even possible to “build trust” in the absence of systemic changes in policing.

Trust is a natural byproduct of justice. Unless efforts shift from “building trust” to police accountability and community control of the police, the problems this effort is meant to address will continue. In fact, if police were held accountable for their actions in meaningful ways, police misconduct would nearly disappear and trust would build on its own, with no special efforts needed.

## Current Situation

Any meaningful effort to address policing issues must start with a realistic assessment of the current state.

### Current Accountability Mechanisms

Minneapolis: The oversight mechanism in Minneapolis, the Office of Police Conduct Review (OPCR) has an abysmal record. In 51 months since its onset (Oct 2012 through Dec 2016) the OPCR has received over 1,500 civilian complaints. However, only six officers have been disciplined as the result of a civilian complaint (two 40-hour suspensions, one 10-hour suspension, and three written reprimands). This represents a 0.4% sustain and discipline rate. The national average for oversight bodies is 7-9%.<sup>6</sup>

Within the OPCR process, there are five steps to adjudicating a complaint. While the agency claims to provide civilian oversight of police, all five levels of the complaint process are controlled by city staff or the police department. A complaint to the OPCR is a complaint to the police themselves. In fact, this agency warns complainants that they are subject to Minn. Stat. §609.505, which criminalizes so-called “false complaints” to police.

In short, **the OPCR is, by design, a failure.** It is the antithesis of a police accountability mechanism.

In almost all cases, CUAPB recommends that community members NOT file complaints with the OPCR.

How was the OPCR designed to fail? From 1991 to 2012, Minneapolis had a functioning Civilian Police Review Authority (CRA). It was weak, but it was a true civilian model, and was frequently held up as a model for other cities by NACOLE (National Association for Civilian Oversight of Law Enforcement). Civilians filed complaints with an all-civilian agency, complaints were investigated by a civilian staff, and decisions were made by 3-member panels drawn from an 11-member civilian board.

In 2012, the Director of the Civil Rights Department, Velma Korbek, initiated and directed a secret effort to kill the existing CRA and replace it with the current system. The new system is a combination of the Police Department Internal Affairs Unit with a supposedly civilian side that reports to the Civil Rights Department. In reality, the police hold all the power. There was NO public participation in the design; the public and even the existing CRA Board was kept in the dark until the design was complete. Once the plan was revealed in a document leaked to CUAPB, the public reaction was literally unanimous in opposition. It was finally rammed through the City Council with 5 dissenting votes.

The OPCR can only recommend discipline; it is not designed to compensate complainants in any way. In theory, people who believe they have been discriminated against by the actions of the police can file a discrimination complaint with the Civil Rights Commission, another division of the Civil Rights Department. That body can actually award financial compensation for sustained allegations of discrimination. CUAPB used to recommend this avenue to complainants who had a basis to claim racial or other discrimination. We no longer recommend filing a complaint with this body either. It barely functions under the direction of Velma Korbel.

On the Commission's website, it says, "The Commission is comprised of 21 Minneapolis residents whose **primary function** as Commissioner is to serve on administrative hearing panels that decide discrimination cases..." (our emphasis). It is also revealed on their website that the last contested case hearing was in December of 2014, and that that hearing was the first in over 5 years. So there has been only one contested case hearing (the primary function of the Commissioners) in over 7 years! Furthermore, 7 seats on the 21-member Commission are currently vacant.

The Civil Rights Department has never had a good reputation in the community, but it has now descended into almost total dysfunction. It has also, itself, been the **subject** of a number of lawsuits claiming a hostile work environment and discrimination! See, for example, [http://blogs.citypages.com/blotter/2013/11/former\\_mpls\\_civil\\_rights\\_dept\\_employee\\_says\\_bosses\\_exploited\\_her\\_and\\_told\\_her\\_not\\_to\\_complain.php](http://blogs.citypages.com/blotter/2013/11/former_mpls_civil_rights_dept_employee_says_bosses_exploited_her_and_told_her_not_to_complain.php)

CUAPB documented these conditions at the time of Korbel's re-appointment hearing in 2014, see Attachment A. Though re-appointed, she was required to work with an outside management consultant.

St. Paul: The agency that addresses complaints in St. Paul is the Police Civilian Internal Affairs Review Commission (PCIARC). This agency operates under an audit model—investigations are conducted by the St. Paul Police Department's Internal Affairs division and a panel made up of five civilians and two police officers reviews the investigations and makes disciplinary recommendations. Established in 1993, this agency has been problematic and ineffective for years. Outside audits in 2009 and 2015 cited serious issues and outlined a series of recommendations, most of which were never acted on. Even the terms of a 2001 mediation agreement with the St. Paul NAACP have been largely ignored. Recently, the St. Paul city council voted to adopt the recommendation to remove officers from the panel.

Since its onset, the PCIARC has received 2993 complaints from community members. Of those, 174 complaints were sustained and disciplined. This represents a sustain rate of 5.8%--far better than the rate by Minneapolis' OPCR but still below the national average for civilian oversight bodies.<sup>7</sup>

#### Criminal Prosecution and the BCA

Criminal prosecution of police for harming members of the community is exceedingly rare in Minnesota. Even when police are terminated for harming a community member, this virtually never results in prosecution. In fact, the prosecution of Ofc. Jeronimo Yanez for the death of Philando Castile appears to be the first such prosecution in the history of the state.

Prosecutors have, by necessity, a close working relationship with police officers. They rely on officer testimony for convictions in criminal cases. Prosecuting an officer would harm that officer's credibility in future court cases and likely affect the prosecutor's relationship with other officers and the department.

Even if a prosecutor is interested in pursuing criminal charges, a proper investigation would be needed. In many police cases, prosecutors have come to rely on the Bureau of Criminal Apprehension (BCA) for such investigations. Our research into the investigation of the Jamar Clark shooting has shown this BCA investigation to be biased, incompetent or both.<sup>8</sup> Although no law or collective bargaining agreement requires it, the BCA routinely waits 48 hours before interviewing officers involved in critical incidents, giving those officers the opportunity to collude before speaking to investigators. There is a double-standard in the treatment of investigations when the matter is police conduct. Further, the BCA's lack of transparency raises questions in the community about whether they can be trusted to perform legitimate investigations into police crimes.

For an accountability mechanism to serve as a deterrent to future violations, it must occur often enough to be a potential consequence for that conduct. Given the rarity of prosecutions for harming members of the community, police officers quite realistically assess that prosecution is not a risk.

#### Prosecution Practices

Poor practices by city attorneys and county prosecutors across Minnesota exacerbate accountability failures that allow and encourage brutal policing to continue.

In both Minneapolis and St. Paul, it is axiomatic that individuals who have had their rights violated by police will be charged with some combination of obstructing legal process (MN Stat. 609.50), disorderly conduct (MN Stat. 609.72) or 4<sup>th</sup> or 5<sup>th</sup> degree assault (MN Stat. 609.2231, MN Stat. 609.224). Prosecutors routinely engage in a "scorched earth" practice of vigorously prosecuting those who have experienced police brutality as a means of creating a Heck bar to limit the potential for civil liability suits.

These same prosecutors routinely fail to prosecute police officer who engage in clear criminal conduct toward community members. One recent example involves a vicious attack on Frank Baker—a completely innocent man—by St. Paul Police Officers Brian Ficcadenti and Brett Palkowitsch in which Mr. Baker was mauled by a police dog and kicked so badly that both lungs collapsed. The city recently settled with Mr. Baker for \$2 million—the largest settlement in the city's history. Palkowitsch was fired but later reinstated by arbitrators who ruled that the city could not fire him as he and other officers who engaged in similar conduct had not been disciplined in the past. Palkowitsch's conduct was clearly criminal. If he had been prosecuted rather than processed through the internal disciplinary process, he would likely have been found guilty of at least a gross misdemeanor and, thus, would have lost his license under POST Board rules (see below). See <http://www.mprnews.org/story/2017/04/05/palkowitsch-reinstated-st-paul-police-frank-baker>

To avoid prosecuting police, city and county attorneys rely on faulty investigations by the BCA and on a grand jury process that is secretive, non-adversarial and is constituted largely to

provide political cover to prosecutors wishing to avoid prosecuting police officers. In the history of the state of Minnesota, there has never been a grand jury indictment of a police officer for brutalizing or killing a community member.

#### Peace Officers Standards and Training Board (POST Board)

The MN POST Board could be an important force for ensuring accountability, fairness, and transparency in dealing with police misconduct. In addition to setting standards and procedures for officer education, licensing, and ongoing training, the POST Board is required by State Statutes to set standards for the handling of civilian complaints by local agencies, and to handle civilian complaints themselves when local agencies are unwilling or unable to do so. In addition, the POST Board is the only agency capable of responding to complaints against Chief Law Enforcement Officers.

The current POST Board seems determined to be a hindrance to police accountability, rather than acting on their mandate as outlined in their enabling statute.

CUAPB has been engaging with the POST Board for over four years. In August 2012, our organization submitted 31 complaints to the POST Board on behalf of 29 individuals. These complaints were accompanied by extensive evidence, including videos. After urging the board for over a year to institute an independent investigation, the POST Board finally acted on one of the complaints. But once the investigation was complete, the results were swept under rug in violation of MN Statute 214.10, particularly Subd. 11(a) and 11(b). Please see Attachment B, which outlines these violations.

We met numerous times with the former executive director and have attended many POST Board meetings, urging the board to follow their own statutes—to no avail. While they pay lip service to their mandate for setting and upholding standards of conduct for police officers, they take little action in this regard. In addition to our own experience, we have continued to receive numerous accounts from members of the community who attempted to file complaints with the POST Board but who were turned away. We are also aware of several incidents in which POST Board licensees were convicted of gross misdemeanors and felonies but the POST Board failed to take action on their licenses, despite a mandate to do so.

Inaction by the POST Board sets a terrible example for accountability at the local level, and contributes to a culture of impunity.

In addition to their failures in addressing licensee misconduct, the POST Board consistently fails to meet their obligations under the Minnesota Public Data Practices Act, Chapter 13. Specifically, the POST Board has refused for three years to release public data on complaints against their licensees that they received from members of the community. At one point, they stated to us that they are not subject to the Data Practices Act, which is obviously false. Because of this lack of transparency, we can't even estimate how many dangerous and racist officers are still terrorizing the community, who would have lost their licenses if the POST Board had followed even the minimum requirements for oversight.

CUAPB has presented this information, with extensive documentation, to the POST Board itself, to the Public Safety Commission which supposedly oversees it, to the MN Attorney General, and to Governor Dayton. None have taken any action, or even responded, other than

to tell us to contact the POST Board. CUAPB would greatly appreciate attention to this matter from the US Civil Rights Commission.

### Civil Rights Litigation

The US Commission on Civil Rights is rightfully very interested in the effects of the use of Section 1983 lawsuits in countering discrimination and the violation of Constitutional rights in policing. There is much academic research on the achievement of the goals of Section 1983. We would call your attention to an outstanding recent paper written by Joanna Schwartz of the UCLA School of Law, and published June 2014 in the NYU Law Review:  
<http://www.nyulawreview.org/sites/default/files/pdf/NYULawReview-89-3-Schwartz.pdf>

Schwartz says, "Civil rights damages actions are 'designed to provide compensation for injuries arising from the violation of legal duties, and thereby, of course, to deter future violations'" (page 952), quoting Justice Scalia in *City of Monterey v. Del Monte Dunes*, 526 U.S. 687, 727 (1999). Her research shows that, from 2006 to 2011, officers were indemnified by the cities to the extent that officers paid only 0.02% of the judgments and settlements in the 44 large cities studied, and none of the judgments and settlements in the 37 smaller jurisdictions studied. Thus, though plaintiffs received considerable compensation, officers suffered virtually no personal consequences.

She says, "Although indemnification furthers §1983's compensation goals, it frustrates §1983's deterrence goals by limiting the impact of compensatory and punitive damages awards on individual officers. In most jurisdictions, officers can have no reasonable expectation that their misconduct will lead to financial sanctions. Lawsuits appear infrequently to have negative ramifications for officers' employment. And available evidence suggests that the threat of being sued does not significantly influence officer behavior." (page 953)

How can we achieve the deterrence goals of §1983? If we do so by greatly reducing the municipal indemnification of officers, we unfairly undermine the goal of compensation. Can deterrence be achieved by the financial consequences imposed by lawsuits against the cities? Cities are already bearing that financial burden, and yet there is substantial agreement that the existing financial consequences have little deterrent effect. However, one risk management strategy employed by Minneapolis and other cities is a practice of "scorched earth prosecutions" as discussed above, to limit the ability of plaintiffs to bring suit against the city.

To illustrate the current difficulty in achieving deterrence through financial costs to cities, Schwartz states, "In previous work, I showed that few police departments gather and analyze information about lawsuits brought against them and their officers; departments do not keep track of which officers have been named as defendants, the nature of the allegations made against them, the information developed during litigation, or cases' outcomes." (page 956)

This appears to be the case in Minneapolis. CUAPB has been attempting for years to compile reliable data on lawsuits against Minneapolis and its police officers. Part of our problem is that the city consciously frustrates our efforts. But we believe that a significant part of the problem is that the city does not keep these records in any organized fashion, if at all. It is clear the City Council has very little idea of the scope and the nature of the problem. We strongly recommend that Minneapolis and other cities rectify this situation. We note, by contrast, that Chicago has a summary of lawsuits available to the public online.

There is a much more important and effective way to achieve both the compensatory and deterrence goals of §1983: individual professional liability insurance requirement for police officers. The insurance would guarantee that plaintiffs can be compensated, and the insurance companies, through higher premiums for officers with problematic histories, would provide a financial incentive to avoid misconduct and a consequence if they fail to do so. The worst officers would become uninsurable and thus unemployable. Please see the section of our testimony on this subject.

### Labor Practices and Arbitration

Labor practices contribute significantly to the lack of accountability for police who engage in misconduct. While all employers have a right to be treated fairly in disciplinary proceedings, it is both perception and reality that police officers have special privileges in this regard.

Not only are police officers afforded preferential treatment in criminal investigations of their conduct (see the section above on Criminal Prosecution and the BCA) but the community sees police officers as being rewarded for misconduct with paid time off (often referred to by the community as paid vacations) during the investigation, back pay when they are reinstated by arbitrators, medals and other recognition even when the justification for force is dubious, and even promotions resulting from police administration attempts to remove problem officer from regular contact with the public. There is literally no other job in the working world in which you can cost your employer huge sums of money and embarrassment and harm the community and still remain employed in the job.

Arbitration, while a right under most collective bargaining agreements, is an especially daunting barrier to police accountability and culture change. In Minnesota, in virtually all cases, arbitrators—who are private contractors and not accountable to the community—restore problem officers to their positions, making it nearly impossible for departments to make terminations a reality. Police administrations know this and sometimes use arbitration to gain political advantage by presenting the appearance of acting to terminate the officer while relying on arbitration to cover for the officer's continued employment. Such was the case in Minneapolis when police administration fired Ofc. Blayne Lehner for a minor offense while failing to discipline him for kicking a handcuffed man in the face, shattering his facial bones and costing the city \$360,000 in lawsuit settlement.

Arbitrators recently reversed the termination of Ofc. Brett Palkowitsch by the City of St. Paul despite egregious conduct that cost the city's taxpayers \$2 million. Although the city referred to Ofc. Palkowitsch as "dangerous and untrainable," arbitrators concluded that he is a "very effective" officer.<sup>9</sup>

### **Specific Recommendations**

#### Arbitration Reset

Police departments, even when they do wish to discipline problem officers and change the culture of the organization, live under the burden of past practices making future discipline impossible. Arbitrators rightfully look for consistency in discipline and cite the lack of previous discipline as the rationale for overturning current discipline.

Police administrations can resolve this issue by engaging in a “reset” process—outlining very specific policies, training on those policies, issuing a Statement of Consistency, and applying consistent discipline from that point forward.

### Require Police Officers to Carry Professional Liability Insurance

Individual professional liability insurance for police officers is a fair and economical way to handle problem officers who brutalize the community. It is a simple idea that would save lives and a significant amount of money for taxpayers. Officers purchase an individual professional liability insurance plan for which he/she is responsible, with the base premium paid by the city. Officers who do not engage in misconduct should see no increases in their premiums while those who engage in conduct that results in complaints and lawsuits would be responsible for premium increases. At some point the officer could be deemed by the insurer to be too risky to continue insuring.

There is no reason why police cannot join a long list of other professionals required to have this type of insurance. The coverage would protect both victim and officer, providing the victim with compensation and protecting the officer from bankruptcy. This model of police accountability is gaining interest across the US, and there has been a recent increase in officers purchasing such liability insurance on their own. Judging from the enthusiastic response in Minneapolis to our petition to get a charter amendment on the ballot requiring this insurance for police, people are ready for this sensible idea.

The concept is a win-win for community and police. The community would be safe from rogue police officers and they would not be paying out for illegal behavior, saving millions of dollars. Officers would no longer have to witness brutality by co-workers and have to lie to cover it up. Trust between officers would be greatly strengthened. The thin blue line of policing would be gone, making it safer for everyone and improving the work environment immensely for police. Policing should be an honorable job and with the implementation of professional liability insurance for police it could become a job worthy of the slogan "To Protect and Serve."

### Scrap Implicit Bias Training—An Unscientific Fraud

Training to reduce implicit bias is a major component of current recommendations to reform policing. Though the idea and the research goes back over a decade, public awareness of implicit bias and the use of implicit bias training has only become common since the killing of Michael Brown in the summer of 2014, followed by other well-known deaths of black men at the hands of police. Implicit bias training is one of the most prominent—and one of the most implemented—recommendations of the President’s Task Force on 21<sup>st</sup> Century Policing. Here in Minneapolis, it is one of the three components of the pilot project by the National Institute for Building Community Trust and Justice (NITJ). Indeed, as you heard from Chief Harteau, all Minneapolis police officers have taken the training.

It is ironic that, just as this training has become mainstream, the scientific literature regarding implicit bias training is showing that the enduring effects of the training are negligible. The testimony you heard on March 21 from Dr. Gene Borgida was very instructive. He reviewed several large meta-studies of the implicit bias research. Earlier studies showed that some interventions showed measurable positive effects – though some did not. But those studies only measured the effect directly after the training. Even the 2014 study he cited, a “research contest” on 17 interventions, did not measure the durability of the effect.

A 2016 study, also cited by Dr. Borgida, was the first large study to test the long-term effects of implicit bias training. It found that NONE of the trainings showed any measurable effect lasting longer than 24 hours to a week. He also noted that none of the studies showed any effect on explicit biases due to the various training methods studied. We appreciate his testimony, and learned from it, but we wish Dr. Borgida had been more forthright and explicit about the implications. He did say that we should not be surprised by these results because implicit biases are an ingrained habit. What his testimony really showed was that implicit bias training, as currently practiced, is utterly worthless.

We have found other evidence supporting this conclusion. Dr. Calvin Lai of Harvard, who appears to be one of the researchers in the studies mentioned by Dr. Borgida, has recently posted a very forthright account of his research interests:  
<http://calvinklai.weebly.com/research-interests.html>

Dr. Lai found that some interventions were successful in reducing implicit prejudice immediately, “but that none continued to have an effect after twenty-four hours. While much progress has been made in temporarily reducing implicit biases, these findings suggest that implicit biases are more stable than previously thought.” He points out, moreover, a finding that further debunks the value of implicit bias training: “An unexpected set of results from the meta-analysis came from mediation models examining the relationship between implicit bias, explicit bias, and behavior. I found that experimentally induced changes in implicit biases did *not* statistically mediate corresponding changes in explicit biases or behavior.” (emphasis ours)

There seems to be little doubt that implicit bias exists, probably in most of us. What it is, and how it affects behavior is much less obvious. Implicit bias seems to be defined as, “whatever it is that the Implicit Associations Test (IAT) measures”. While it has effects, its effects are dramatically less than the effects of **explicit** bias, which remains rampant in large-city police forces.

Explicit bias is much more amenable to measures that would affect actual police behavior. It is often explicitly stated, based on the number of language complaints received from the public. Its effects are generally more explicit. Training and coaching are not significant antidotes to explicit bias. If an officer has not learned in kindergarten not to call people bad names and hit other children, he needs more than just training at this stage in his life. The good thing is that, unlike implicit bias, explicit bias can be effectively dealt with through clear policies and consistent enforcement with significant discipline. A rogue officer will not be fired due to his implicit bias. But the effects of explicit bias are observable and punishable.

Unfortunately, implicit bias training is detrimental for reasons beyond the significant waste of time and money. Just the constant public relations emphasis on it detracts from considerations of explicit bias and overt racism.

But if the police department’s goal is increasing trust through good public relations, rather than actual improvement in police conduct and racial equity, then the concept of implicit bias is a bonanza. It shows they are doing something about racial justice—witness Chief Harteau’s pride in her department’s completion of implicit bias training. Most importantly, it reinforces the

notion that cops are just like the rest of us—we all have implicit bias. This ignores the demonstrably greater level of racism among police officers, and their ability to act on their racial prejudices with billy clubs, Tasers, dogs, and guns.

Our recommendation is to totally halt all implicit bias training, and to disavow the discredited concept that it holds any promise for reducing discrimination in policing.

#### Stop Selling the Idea of Body-Worn Cameras as an Accountability Mechanism

After release of a much-vaunted study out of Rialto, CA<sup>10</sup> about the efficacy of body-worn cameras in decreasing police officer use of force, implementation of these devices has become a priority for police departments of all sizes across country. The adoption of body-worn cameras has become the central “take away” from the President’s Task Force on 21<sup>st</sup> Century Policing, incentivized by large grants to departments that adopt these devices.

More recent studies show mixed results. A study by Ariel et al, one of the largest randomized-controlled trials in criminal justice research, indicates that the use of body-worn cameras failed to reduce the use of excessive force by police officers.<sup>11</sup>

One problem with body cams is what they capture and what they don’t. These cameras sit on the chest or shoulder or are mounted on glasses worn by the officer and are pointed at the community member. They don’t actually capture the officer’s actions, only the community member’s responses to those actions. Hearing the interaction may be beneficial or it may not. Due to their location and angle, chest and shoulder-mounted models create perspective bias, giving the appearance that the community member is larger and more menacing to the officer.

More important than the cameras themselves are the policies put into place around the use of these devices. If police officers are allowed to turn them on and off at will, if the video is not preserved in ways that prevent its destruction or alteration or if the footage is not available through public data requests, then these devices are useless as a tool for police accountability. In 2016, the Minnesota legislature altered the state’s Data Practices Act to make all footage non-public. Without good policies and serious consequences for violating them, proposals to purchase body cameras are little more than a financial boon for TASER International and the rest of the corporations peddling these body cams as the miracle cure for police brutality.

Finally, as St. Louis University law professor Justin Hansford aptly points out<sup>12</sup>, even with video evidence such as in the Eric Garner case, the laws are heavily stacked against ever holding police accountable.

#### K9 Policy: From “Locate and Bite” to “Locate and Bark”

The use of police dogs has a long racist history, and reform of K-9 policy would have a particularly dramatic impact in the African American community. The fear of police dogs among blacks is well-founded, both in history and in current practice. Dogs were first used to hunt down escaped slaves. Even after the Civil War, police and private patrols used dogs to terrify and control the newly-free slaves. The civil rights movement of the 60’s faced police dogs used to control crowds and peaceful demonstrations.

But the racist use of police dogs is not just an historical practice. “On the day that Michael Brown died in August 2014, a policeman in Ferguson, Missouri guided the dog he handled to

urinate on a makeshift memorial at the site where his colleagues had shot Brown hours before. ... One long-running complaint in Ferguson was that police regularly used their dogs with excessive force against only African Americans. In the recent past, police in Los Angeles inflicted more injuries with dogs than guns, batons, or tear gas, and did so disproportionately against black people, who they often called 'dog biscuits.' These cases are not isolated. Dogs have been a tool for the intimidation and control of African Americans since the inception of slavery."<sup>13</sup>

Recent high-profile cases of excessive force by K-9s in the Twin Cities have also involved African Americans.

There is a promising reform that is being implemented in some cities, a reform that significantly reduces injuries to suspects, dogs, and officers, and that is saving money in lawsuits. If one assumes, perhaps too charitably, that police departments no longer wish to use K-9s for racist terror, then this reform is truly a win-win situation.

Though not always put in writing, we observe that the current K-9 policy is best described as "locate and bite". The promising alternative to this is "locate and bark". Though biting may very occasionally be required to capture and hold a dangerous suspect, K-9s today are seldom used or needed to chase people across fields. In most cases, as in all the recent high-profile cases, the suspect is already unable to flee.

One of the important positive trends in policing is an emphasis upon de-escalation. Using a K-9 to bite a suspect virtually always leads to significant escalation of the conflict. When used upon a person who is merely uncooperative, that person necessarily becomes actively resistant. No one can remain calm and cooperative and follow officers' orders when they have a dog biting their leg. Even a non-violent person will necessarily fight back and try to free themselves from the terror and pain of a dog bite.

In St. Paul recently, Frank Baker was awarded a record-breaking settlement of \$2 million for his crippling injuries. He was totally innocent and wrongly-identified when he was ordered from his car. When he was too slow to follow officers' orders, they sicced the K-9 on him, who not only bit him, but dragged him in circles, according to the arbitrator's report. Mr. Baker was of course unable to remain still and cooperative to be handcuffed. When another officer arrived at this chaotic scene, he (wrongly) felt it necessary to kick Mr. Baker to gain his cooperation, to the point that he broke his ribs and collapsed both lungs. Police did many things wrong in this encounter – but it all started with the totally unnecessarily escalation of using the K-9 to bite.

In May 2013, Terrance Franklin was trapped in a cramped basement by five SWAT team members plus a K-9. Vastly out-numbered and unarmed, there is no reason to believe that Franklin would have attacked anyone. But when the dog bit him, he, being human, was unable to remain calm and cooperative. The situation became chaotic, and he was shot dead by the officers.

This must stop. We ask the U.S. Civil Rights Commission to recommend this important policy change.

Stop Reimbursing Police Officers for "Bulletproof Warrior" Training

Training is an important, yet expensive aspect of ongoing professional development. Despite its importance, much of the training available to police officers on the open market is filled with unsubstantiated “theories” that exaggerate the dangers of policing and encourage a “kill or be killed” mindset. Such training “portrays a world of constant and increased threat to officers, despite more than two decades of declining violent crime in the United States, and the fact that the last few years have been among the safest to be an American police officer.”<sup>14</sup> Quoted in a New York Times article on the issue, Chuck Wexler, Executive Director of the Police Executive Research Forum stated, “Courses like this reinforce the thinking that everyone is out to get police officers. This teaches officers, ‘If you hesitate, you could lose your life.’ It is the exact opposite of the way many police chiefs are going.”<sup>15</sup>

Although many departments have stopped using this training, they continue to reimburse for and accept continuing education units from these courses. This practice must end.

#### Independent Investigations Run by Independent Prosecutors

The utter failure of the grand jury process to produce indictments in police critical incident cases and the lack of prosecution of police in these incidents denies justice to those harmed in these incidents and validates the community’s perception of police being above the law.

CUAPB recommends the establishment of a permanent, independent special prosecutorial office to investigate and prosecute incidents by police officers that result in great bodily harm or death (critical incidents). This office must have sole responsibility for investigating and prosecuting these incidents. Prosecution must commence from an investigation and complaint, not an indictment. The use of grand juries to address police critical incidents must end.

Progressive members of the state legislature have proposed bills that would enact these measures. Unfortunately, the political climate in our current legislature will not permit these bills to move forward, though we will continue to push for them in future sessions.

#### Require the POST Board to Actually Enforce the Law

Perhaps we can best sum up our recommendations by saying that the POST Board should function in a manner similar to other state professional licensing boards:

- It should set and enforce standards of conduct for the licensed individuals.
- It should accept and act upon complaints submitted by members of the public.
- It should conduct or arrange for independent investigations of misconduct.
- It should conduct public hearings regarding potential licensing actions (and Data Practice statutes should be modified as needed to permit this).
- It should rule on potential license suspensions or revocations affording officers due process with provision for appeal.
- It should publish information on its website on the nature of accusations and the final actions taken by the board.
- It should require all licensees to obtain and maintain professional liability insurance as a condition of continued licensure. See our section regarding Professional Liability Insurance for Police.

In addition, the POST Board should diligently monitor local agencies and enforce compliance with the standards set for the handling of complaints from members of the community. The POST Board should also take seriously its unique responsibility to respond to alleged misconduct by Chief Law Enforcement Officers, because it is unrealistic to expect a local Internal Affairs Unit to investigate and discipline its own Chief.

The Governor and the Public Safety Commission need to take responsibility for oversight of the POST Board.

Please also refer to Attachment C: CUAPB POST Board Demands.

#### Remove Police as Responders to Mental Health Crises

Studies show that 50% of people killed in police incidents nationally were in a mental health crisis at the time of the incident. In dealing with people who are known to have mental health problems, police should have the expertise of a small team of on-call mental health experts who have the experience needed to assess a situation and de-escalate it before a tragedy occurs. Certainly, law enforcement should be present if a weapon is involved, but they should act at the discretion of the mental health team. Of late, more attention is being paid to this problem in Minneapolis. The MPD is in the process of training all their officers in Crisis Intervention Training. The officers who show an aptitude and interest in assisting on these calls should be assigned accordingly. This should not, however, preclude the presence of mental health specialists on applicable 911 calls.

#### End Militarization of Local Police, Most Uses of SWAT Teams, and Warrant Service Abuse

The increasing use of military weaponry by police departments to handle demonstrations is disturbing. The recent use of military equipment from the Hennepin County Sheriff's office during the Standing Rock, ND protest has brought home frightening images of domestic war. The MPD and Sheriff's offices have no need for this equipment, nor is it even practical to use in our city. Use of these war machines makes people feel they are perceived as the enemy, rather than as peaceful people trying to legitimately protest wrongdoing by the government.

Another escalation by police is the growing number of unwarranted, violent invasions of people's homes by SWAT teams. Here in Minneapolis we have a long history of mistaken SWAT raids. One, based on false information, ended with the deaths of two innocent elderly people, Lloyd Smalley and Lillian Weiss. They died as a result of smoke inhalation from a fire started by a stun grenade that was thrown into the home. There have been other illegal SWAT raids through the years. One of the most spectacular was the mistaken raid on a Hmong man's home, during which police fired 22 times, luckily missing the man and his six children and wife, who were home. The man fired at the police, not knowing who they were or what was going on, but stopped when his sons told him the intruders were police. After this botched raid, the officers were rewarded with medals for valor. More recently, a woman sued the city for \$2 million when she was burned by a flash bang grenade during a mistaken raid. After the deaths of Smalley and Weiss, stun grenades were banned for a time, then reinstated.

There are too many stories of SWAT team raids that started off aggressive and then spun out of control. These raids seem to be getting more and more violent. On the other hand, there was a SWAT team called to a situation on a reservation in northern Minnesota. In spite of there being law enforcement from four jurisdictions, the only shots fired in the day long incident were

fired by the people inside the house, and no one was injured. These raids must not be conducted as if people are presumed guilty. Police officers are not supposed to mete out punishment, but only to apprehend suspects.

The unfettered ability of officers to come into a house without a warrant is another breach of the right to feel secure in one's home. There is virtually no way for a person to deny an officer entrance because there are many instances of simply battering a door down. It is a situation where the occupant must do everything right, which is different based on which officer shows up. How amazing that police want the public to trust them, to respect them, when they are constantly requiring more and more obedience, and the rules keep changing.

The public is not asking for superficial actions from the police, like coaching kids in sports, or inviting folks to picnics, or giving away trinkets at festivals. The public is asking for respect, to feel safe in the presence of police and to not be brutalized or killed for absolutely no reason. They are asking for prompt and competent help when they call 911, not to be ignored because they live in the wrong neighborhood. When we see progress in all these areas, then we can talk about trust. We're a long way from that today.

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<sup>1</sup> COPS Office. 2015. *President's Task Force on 21st Century Policing Implementation Guide: Moving from Recommendations to Action*. Washington, DC: Office of Community Oriented Policing Services.

<sup>2</sup> Ibid. Page 6

<sup>3</sup> Ibid. Page 23

<sup>4</sup> Ibid. Page 1.

<sup>5</sup> President's Task Force on 21st Century Policing. 2015. *Final Report of the President's Task Force on 21st Century Policing*. Washington, DC: Office. Page 1.  
of Community Oriented Policing Services

<sup>6</sup> Data received from the Office of Police Conduct Review via data practices act requests.

<sup>7</sup> Data received from the St. Paul Police Department via data practices act requests.

<sup>8</sup> Jamar Clark Analysis Fact Sheet 1 <http://www.cuapb.org/reports>

<sup>9</sup> Palkowitsch Arbitration Decision. <https://www.scribd.com/document/344182927/Palkowitsch-Arbitration-Decision>

<sup>10</sup> *Self-Awareness to Being Watched and Socially-Desirable Behavior: A Field Experiment on the Effect of Body-Worn Cameras on Police Use-of-Force*.

<http://www.policefoundation.org/sites/g/files/g798246/f/201303/The%20Effect%20of%20Body-Worn%20Cameras%20on%20Police%20Use-of-Force.pdf>

<sup>11</sup> Ariel, B. et al. 2016. "Contagious Accountability": A global Multisite Randomized Controlled trial on the Effect of Police Body-Worn Cameras on Citizens' Complaints against the Police. *CRIMINAL JUSTICE AND BEHAVIOR*, 201X, Vol. XX, No. X, Month 2016, 1–24.

<sup>12</sup> *Body cameras won't stop police brutality. Eric Garner is only one of several reasons why.* Justin Hansford. December 4, 2014. Washington Post

<sup>13</sup> *Canine Terror*. Jacobin Magazine, <https://www.jacobinmag.com/2016/05/dogs-bloodhounds-slavery-police-brutality-racism/>

<sup>14</sup> *Minnesota Officer's 'Bulletproof Warrior' Training is Questioned*. Mitch Smith and Timothy Williams. July 14, 2016. New York Times. [https://www.nytimes.com/2016/07/15/us/minnesota-police-officers-bulletproof-warrior-training-is-questioned.html?\\_r=0](https://www.nytimes.com/2016/07/15/us/minnesota-police-officers-bulletproof-warrior-training-is-questioned.html?_r=0)

<sup>15</sup> Ibid.



## **Communities United Against Police Brutality™**

**4200 Cedar Avenue South  
Minneapolis, Minnesota 55407  
612-874-STOP  
www.CUAPB.org**

March 16, 2014

Minneapolis City Council  
350 South Fifth Street, Room 307  
Minneapolis, Minnesota 55415

RE: Reappointment of Velma Korbelt as Director of the Civil Rights Department

Dear City Council Members:

Communities United Against Police Brutality was established in 2000 to provide a voice for people dealing with the effects of police brutality and to ensure accountability of police to the community. We have closely followed the work of the Civil Rights Department as it relates to police oversight and discipline. Our experiences and observations compel us to oppose the reappointment of Velma Korbelt to the position of Director of the Civil Rights Department.

Ms. Korbelt played the lead role in dismantling the CRA and replacing it with the OPCR. The CRA was never given the power or the resources to be sufficiently effective, but it did provide an opportunity for victims of police misconduct to complain to a civilian agency, rather than relying on the police to police themselves. The CRA was formed over 20 years ago in response to community outrage over the deaths of an elderly black couple in a police raid. Community members put thousands of hours into its formation, operation, and several redesigns.

Ms. Korbelt has destroyed what the community demanded, in a process that was secret and avoided all public input. The proposal was six months along, and in nearly its final form, when the public – or even many Council members – were alerted by CUAPB after we were given a leaked document. Even the members of the CRA had not been informed or consulted. When Ms. Korbelt was forced to present the proposal at a public CRA Board meeting, she refused to answer questions and left the room. She did say, however, that no substantial changes would be made, regardless of public feedback. She held true to her word, despite unanimous public opposition at three community meetings mandated by the City Council.

The new OPCR plan was so bad that it was opposed in a StarTribune editorial (<http://www.startribune.com/opinion/editorials/165792186.html>) and in a letter from the National Association for the Civilian Oversight of Law Enforcement. The NACOLE letter said, “as proposed, the model for Minneapolis will effectively eliminate independent civilian oversight...”

The predictions have come true. The city has suffered the embarrassment of a front page news article documenting zero discipline after handling 439 cases (<http://www.startribune.com/local/minneapolis/221422101.html>). The PCOC, the only group in the new agency to meet publicly, did not meet for an entire year, and has yet to schedule their first “community listening session”. The PCOC was designed to have no access to actual case files, so their ability to audit the investigations is meaningless.

Our partners in advocacy and activism report similar dysfunction in the other divisions of the Civil Rights Department. If you wish to demonstrate your stated concerns for police accountability and racial equity, you must deny the re-appointment of Velma Korbelt.

(over)

We are also concerned about reports of an abusive work environment within the Civil Rights Department. Indications have come from news reports, lawsuits filed against the department, staff turnover, and our own contacts with former employees. A recent whistle-blower lawsuit has been documented in City Pages

([http://blogs.citypages.com/blotter/2013/11/former\\_mpls\\_civil\\_rights\\_dept\\_employee\\_says\\_bosses\\_exploited\\_her\\_and\\_told\\_her\\_not\\_to\\_complain.php](http://blogs.citypages.com/blotter/2013/11/former_mpls_civil_rights_dept_employee_says_bosses_exploited_her_and_told_her_not_to_complain.php)). The allegations point to a situation detrimental to city employees, a huge potential financial liability to the city, and an inability to perform the important functions of the Civil Rights Department. It is the Council's responsibility to oversee this department, and it must investigate these allegations further before voting on the re-appointment of Velma Korbel.

It is time for the City Council to call for a search for a better Director, one who will at long last clean up the Civil Rights Department, implement greater accountability for our police, and be a worthy ambassador for the city's commitment to equity.

For justice,

*Michelle F. Gross/es/*

Michelle F. Gross  
President

**ATTACHMENT B**

**Statement to the POST Board by CUAPB, January 22, 2015**

We came to the POST Board meeting one year ago to present clear evidence that the Executive Director was in violation of State law in the handling of multiple complaints we had brought to him. We expected action from this board to exercise its oversight responsibilities and correct these violations.

Seeing no action four months later, we sent a letter to each member of this Board, again laying out the unlawful conduct of the POST Board and requesting immediate corrective action. We received no reply. We see no indication that this Board intends to take the necessary action.

Our requests at that Board meeting and in our letter were clear and simple. You can refer to that letter, but I will repeat them briefly:

- 1) The complaint that was investigated by Detective Bluhm of the St. Cloud Police Department must be reconsidered by the POST Board Complaint Committee, and that committee must this time follow the requirements in State Statute 214.10, most particularly those in Subdivisions 10 and 11, regarding proper notice, opportunity for the complaining party to be heard by the committee, and the access to evidence that was withheld from the committee by the Executive Director.
- 2) Proper and lawful consideration of other complaints we submitted. These other complaints were not even investigated. When the relevant law enforcement agencies refused to process these complaints in even the most minimal fashion in compliance with the procedures set by the POST Board, it became the responsibility of the POST Board to enforce those standards, and it is the responsibility of the POST Board to refer the complaints to an independent investigator when the relevant law enforcement agency refuses to do its job.
- 3) Disciplinary action against the licenses of chief law enforcement officers who fail to follow the procedures set by the POST Board. Your Rule 6700.2600 says, "Complaints which allege misconduct by a licensee shall be processed according to the agency's written procedures. Failure to comply with these procedures or any other provisions of parts 6700.2000 to 6700.2500 shall be grounds for disciplinary action against the chief law enforcement officer's license." For you to enforce the rules you establish, there must be accountability for those who repeatedly and flagrantly violate those rules.
- 4) Immediate action on the complaints submitted by Officers Watt and Erkenbrack of Crystal MN. These are complaints against their chief law enforcement official, the Police Chief of Crystal, for illegal whistleblower retaliation. As such, these complaints are the direct responsibility of the POST Board – there is no other avenue for administrative action against chiefs who violate the law as well as your requirements.
- 5) Proper and legal response to our Data Practice requests, as discussed by Michelle Gross.

All of these actions are required by law and by your own rules. They are **your** responsibilities, as a Board, and as individual members of this Board. Normally these actions would be handled properly and

lawfully by your Executive Director, with only routine oversight by the Board. But we came to your Board meeting a year ago because we could clearly see that the Executive Director at that time was only stalling and stonewalling.

We welcome your new Executive Director, and we should be able to expect that he will, with your oversight, comply with the law. However, it is in the end your responsibility as a Board, to ensure that he does that.

This has gone on far too long. We have exhausted our administrative remedies. As the POST Board, you all have an important role to play in combating police misconduct, bringing accountability to local law enforcement agencies as well as their officers, and setting the model for seeing that the law applies to all – even to those who enforce it.

Since we were last here, and especially in the last five months, there has been much more attention paid to police misconduct, and much more scrutiny of the agencies and methods used to deter and punish police brutality. Here in MN, you are the highest body with that authority, and as such, you should and will be more subject to that attention. It is about time.

## COMMUNITIES UNITED AGAINST POLICE BRUTALITY POST BOARD DEMANDS

These demands will inform both our comments at the POST Board meeting and our protest on October 22, 2015.

### Preamble

The POST Board is the licensing agency for law enforcement officers in Minnesota and is responsible for ensuring the professionalism of law enforcement departments in the state of Minnesota. Their ongoing failure to enforce appropriate standards for their licensees or hold them accountable for misconduct has turned the agency into a rubber stamp for brutal policing.

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**Situation:** The POST Board accepts complaints and even has a complaint form on their website but fails to address these complaints in a meaningful way.

**Our Demand:** The POST Board has a mandate and procedures for addressing complaints. Effective immediately, the POST Board must stop throwing out complaints from community members and must address those complaints in a meaningful way, including taking action on the licenses of licensees.

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**Situation:** The POST Board has specific requirements enshrined in state statute and their administrative rules on how they are to address complaints. These include assigning an independent investigator, holding a hearing, providing 30 days' notice of the hearing to the complainant and subject officer so they may attend, providing the complainant with the opportunity to submit additional evidence, and notifying the complainant of the outcome of the hearing. None of this happened with any of the 32 complaints we filed on behalf of victims of the Metro Gang Strike Force or the many other complaints filed by community members who have contacted us.

**Our Demand:** The POST Board must immediately begin following their own statutes and administrative rules in the handling of complaints. The POST Board must provide a rehearing on our complaints as well as for any complainants who request it.

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**Situation:** The POST Board is the only venue for filing complaints against the chief law enforcement officer (CLEO) of each agency and is required by statute to accept and address these complaints. However, multiple complaints filed by our organization and others against CLEOs have been ignored.

**Our Demand:** The POST Board is to reconsider all complaints received on CLEOs in the past five years, including our complaints.

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**Situation:** The POST Board's model policy on addressing complaints requires police agencies to notify individuals of the outcome of their complaints. However, the POST Board fails to follow its own policy as it has failed (and in some cases refused) to notify complainants of the outcome of complaints filed with the POST Board.

**Our Demand:** The POST Board must follow the mandates of the model policy it requires law enforcement agencies to adopt. This includes immediate notification to the complainant of any extensions in the investigation as well as the final outcome of the complaint process.

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**Situation:** Other licensing boards address complaints, take action on the licenses of licensees, and publish information on these actions on their websites. The POST Board is totally lacking in transparency.

**Our Demand:** The POST Board must provide information on the handling of complaints and all actions taken against licensees on their website.

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**Situation:** The POST Board refuses to abide by the Minnesota Government Data Practices Act, in violation of the law. The POST Board has failed to fulfill our January 2014 request for information on complaints received from members of the public. Information Policy Analysis Division has affirmed that this data is public.

**Our Demand:** The POST Board must immediately fulfill our data request, which is over 21 months old. The POST Board must consistently fulfill data requests in accordance with the Minnesota Government Data Practices Act.

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**Situation:** Local agencies are required to adopt procedures for handling complaints, and the POST Board enforces that such policies be in place. But the POST Board does nothing to require that local agencies actually follow their written policies.

**Our Demand:** The POST Board must monitor local agency compliance with the rules for handling complaints, including investigation into those agencies which sustain hardly any complaints (such as Minneapolis – see our data on the OPCR). The POST Board must especially investigate complaints from the public which allege the failure of a local agency to follow the mandated procedures for handling complaints of misconduct.

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**Situation:** The POST Board has insisted that it can only take action against a peace officer's license if that officer has been convicted of a gross misdemeanor or a felony, despite the enumeration of several other causes in its Rule 6700.1600.

**Our Demand:** The POST Board must take action in the full range of standards of conduct in its rules. The POST Board should amend its rules, particularly the Standards of Conduct, in order to enforce professional behavior by licensees.

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**Situation:** The POST Board claims very limited power to discipline peace officers who engage in misconduct.

**Our Demand:** Where the POST Board feels its powers are too limited to adequately enforce professional standards, it should lobby the legislature for the necessary authority.

Honorable Commissioners  
United States Commission on Civil Rights

Commissioners:

We are Asian Americans from many different ethnicities and nationalities, who together request your attention to the systematic inequities experienced by many Minnesotans from communities of color, and particularly we write in solidarity with Black Minnesotans, who are deeply impacted by systems that yield grave criminal justice disparities. According to a July, 2016 Washington Post article, "White people make up roughly 62 percent of the U.S. population but only about 49 percent of those who are killed by police officers. African Americans, however, account for 24 percent of those fatally shot and killed by the police despite being just 13 percent of the U.S. population." Other communities of color and Indigenous Minnesotans experience forms of police misconduct, including Asian American communities.

Minnesota is a wealthy state with a median household income of just over \$60,000 a year and a longstanding reputation for investing in the common good. Minnesota's communities of color and Indigenous communities have a very different experience. According to 2015 data cited by the Minneapolis Star Tribune, Black households have a median income of half of the median state income, at \$30,000 a year. These disparities extend to education outcomes. According to 2015 NPR data, 85% of white students graduate Minnesota public schools on time, while less than 60% of Black and Latino students graduate on time, and a shocking 49% of Indigenous students graduate on time. These disparities also exist in healthcare. The nonpartisan nonprofit Minnesota Community Measures reports 27% of black Minnesotans receive optimal diabetes care, compared with 41% of white Minnesotans.

We write to emphasize the moral urgency of Minnesota's situation, and also with real frustration. We write from personal experience. The economic data suggests Asian Minnesotans have a median income of \$72,000 a year, yet Minnesota's Southeast Asian communities, particularly Hmong Minnesotans, the largest subgroup of Asian Minnesotans, live in poverty below \$12,000 a year. Asian Minnesotans born in Laos experience significant health disparities, including disproportionate rates of untreated Hepatitis B infection. The experience of struggling invisibly in the face of affluence is visceral and real for Asians in Minnesota, and we cannot stay silent.

RADAZNs formed out of an earlier organizing effort, APIs for Black Lives. In December 2015, APIs for Black Lives partnered with the grassroots group Asian American Organizing Project to conduct door knocking with Asian American households on the Northside of Minneapolis. We canvassed Asian American neighborhood residents about the police killing of Jamar Clark and their own experiences with the police. Overwhelmingly, the responses from the door-knocking surveys call for more police transparency and accountability. A few key highlights:

- 1) While a majority of respondents answered that they have not faced police abuse, many of those with this response went on to describe situations involving what could be

characterized as police abuse, such as excessive force or racial profiling, indicating that they did not relate to the term “police abuse.” Instead, most respondents used the term “discrimination” to describe what happened to them.

- 2) Several respondents linked the killing of Jamar Clark to the 2006 killing of Hmong youth Fong Lee, which also occurred on the Northside of Minneapolis.
- 3) Asian American residents predominantly answered that the 4<sup>th</sup> precinct occupation by Black Lives Matter protesters did not affect them in a negative way, despite media coverage that consistently centered narratives framing the protest as a community nuisance.

This surveying effort tells us that police misconduct in the Asian American community is overlooked and under researched, and suggests that communities of color and Indigenous communities connect our experiences with and struggles against systematic police abuse.

The accusation of a famous immigrant and refuge-seeker Albert Einstein in **1946** reads, “Your ancestors dragged these black people from their homes by force; and in the white man’s quest for wealth and an easy life they have been ruthlessly suppressed and exploited, degraded into slavery. The modern prejudice against Negroes is the result of the desire to maintain this unworthy condition.”

Yet the point of data and this letter is not that we want black communities, other communities of color and indigenous communities, to experience White Minnesota as normal. Many of our Asian communities came to Minnesota and to the United States seeking equitable opportunity. The hope that immigrants bring and the resilience, innovation and persistence that refugees bring are amazing assets wasted and rudely disregarded by majority culture. Minnesota’s communities of color and indigenous communities are vital to our future. Our liberation and our success depends not on charity, but on how we recognize and leverage the assets of the communities of color and indigenous communities we have taken in contempt all around us.

Respectfully,

RADAZNS

# On police abuse and Black Lives Matter: Talking Asian to Asian in North Minneapolis

By Eunha Jeong Wood and Kong Pheng Pha | March 2, 2016



Photo courtesy of APIs4BlackLives.

[APIs4BlackLives-MN](https://www.facebook.com/APIforBlackLivesMattersMN) (<https://www.facebook.com/APIforBlackLivesMattersMN>) is a coalition of Minnesota Asian and Pacific Islander (API) individuals and organizations that work for social justice in solidarity with Black Lives Matter (BLM) – [Minneapolis](https://www.facebook.com/blacklivesmatterminneapolis) (<https://www.facebook.com/blacklivesmatterminneapolis>) and [St. Paul](https://www.facebook.com/BlackLivesMatter-Saint-Paul-1448057435496658) (<https://www.facebook.com/BlackLivesMatter-Saint-Paul-1448057435496658>). Our coalition seeks to address anti-Blackness in Asian communities, advance cross-community collaboration, and increase API participation in political and racial justice issues.

Volunteers with APIs4BlackLives-MN talked with Asian residents in North Minneapolis neighborhoods on the weekends of Dec. 7 and Dec. 14, 2015 about their experiences with police and with the Black Lives Matter movement. We sought to assess the level of awareness about and engagement with the issues of [police abuse](http://www.cuapb.org/what-we-believe) (<http://www.cuapb.org/what-we-believe>), [the killing of Jamar Clark](http://heavv.com/news/2015/11/jamar-clark-minneapolis-minnesota-police-shooting-shot-dead-killed-shooting-protests-handcuffed-unarmed-justice4jamar-jamesandplymouth-james-plymouth-photo/) (<http://heavv.com/news/2015/11/jamar-clark-minneapolis-minnesota-police-shooting-shot-dead-killed-shooting-protests-handcuffed-unarmed-justice4jamar-jamesandplymouth-james-plymouth-photo/>) and [Black Lives Matter](http://blacklivesmatter.com/) (<http://blacklivesmatter.com/>).

The Minnesota API community is predominantly comprised of South Asian, East Asian and Southeast Asian people. However, we also understand that the different communities and ethnic groups in Minnesota are more multifaceted and complex than just these two categories. In general, the term “API” is used to include all those who identify as Asian and/or Pacific Islander. Throughout this article we primarily use the term “Asian” when referring to the residents we surveyed, and use the term “API” when referring to broader Asian and Pacific Islander identities and communities.

Volunteers door-knocked in pairs, with each pair consisting of at least one volunteer who is

able to speak Hmong or Vietnamese. The data for our door-knocking lists were not disaggregated by Asian ethnicity; however, the Asian residents on the list identified primarily as Hmong or Vietnamese. Volunteers knocked on 394 doors and were able to speak with 74 households. Residents were asked four questions:

1. *Has your family faced police abuse here in North Minneapolis (i.e. racial profiling, wrongful arrest, wrongful suspicion, police physical aggression, searching without warrant, and being pulled over, ticketed or followed without a reason, etc.)?*
2. *Do you know about the group Black Lives Matter? If yes, what are your thoughts about it?*
3. *Were you in any way affected by the community members who were peacefully protesting at the North Minneapolis police station? If Yes, can you share?*
4. *What would you do to improve police and community relations?*

Responses about police interactions and police abuse were frequently contradictory. When asked if they had faced police abuse, 73 percent of respondents answered “no” and 7 percent answered “unsure.” However, a number of the respondents who stated that they had not experienced police abuse then went on to describe situations involving what would be characterized as police abuse, such as excessive force or racial profiling, indicating that they did not relate to the term “police abuse.” Instead, most respondents used the term “discrimination” to describe what happened to them.

One resident described how the police had pointed a gun at his unarmed, elderly, non-English-speaking father’s face in their driveway one night after following him home in his vehicle. Due to the language barrier, his father was unable to understand or comply with the officers’ commands. The police quickly escalated the situation by drawing their firearms when immediate compliance was not shown, despite pleas from the resident explaining that his father did not speak English. Another resident relayed how the police had gone through their purse during a traffic stop without giving them a reason why. Others described how they were accused of having drugs when being pulled over, though without the police having any valid reason for suspicion.

A number of respondents commented that “they try to stay out of the way” or “politely talk to them [the police].” Those who responded “yes” to having experienced police abuse also shared personal experiences about being pulled over frequently, being given tickets with high fines for minor infractions, and cited a lack of reciprocal dialogue by the police when they were retained or pulled over. They stated that the police rarely attempted to understand both sides of the situation, and that they were treated as guilty from the onset of the police interaction.

When residents were asked if they support the Black Lives Matter (BLM) movement, the highest response was “unsure” at 51 percent, with 38 percent answering “yes,” and 10 percent answering “no.” Those who answered “unsure” stated that they were not sure what Black Lives Matter is, or stated that though they agree that black lives do matter, they did not have a full understanding of what the activists were trying to do. Some who answered “yes” said that they support Black Lives Matter and also think that all lives matter. Others said that they respect authority, but think the tapes [of Jamar Clark] should be released and that the killing should not have happened.

In regards to the specifics of Black Lives Matter, though many respondents indicated that they either did not know what Black Lives Matter exactly is or were unsure of its purpose, few residents outright opposed BLM. Some respondents said that they have “seen a little bit about it in the news,” but have not seen in-depth coverage that goes beyond stating that a protest occurred. Non-English speaking residents said that they were unable to access information about BLM or the 4th Precinct Occupation. One resident said that the media had made the protests appear violent even though it was peaceful. For those who answered “unsure” about their opinion of BLM, a common message was that they “support all minorities,” but felt confused about the issues. These responses indicate that the media lacks



Photo courtesy of APIS4BlackLives-MN

When asked if they were in any way affected by the 18-day [4th Precinct Occupation](http://www.mnnc.org/4thprecinct) in North Minneapolis from mid-November to early December of 2015, 72 percent answered “no,” 14 percent answered “unsure,” and 14 percent answered “yes.” The 14 percent who answered “yes” cited traffic delays, a feeling of disruption and helicopter noise. One respondent said they had been affected because they were disturbed that “a young man had been shot by the police” and that they were “supportive of BLM-Mpls finding justice.” Notably, the residents predominantly answered that the protest did not affect them in a negative way, despite media coverage of the occupation that consistently centered narratives framing the protest as a community nuisance.

Lastly, APIS4BlackLives volunteers asked residents what they would do to improve police and community relations. Eighty percent of the residents had suggestions and opinions on this topic. Overwhelmingly, the responses from the door-knocking surveys call for more police transparency and accountability, better training for the police and improved media coverage that represents the viewpoints and needs of communities of color, immigrant communities and under-resourced neighborhoods.

Responses also conveyed a desire for better communication and relationship-building by the police in order to build trust and decrease discrimination and hostility during police interactions. Specifically residents asked for more effort by the police to understand both sides of an issue during an interaction, and more cultural competency training. Racial profiling and being “too quick to shoot” were also cited as problems. Of those asked, 20 percent answered “don’t know” or “unsure” to the question of what could be improved. No respondents stated that there was nothing to improve.

Responses to the door-knocking demonstrate that the majority of Asian residents surveyed in North Minneapolis are engaged with and care about the issues of police conduct and with Black Lives Matter, even if they do not fully understand or agree with the actions of Black Lives Matter activists. The vast majority of Asian residents surveyed also expressed an interest in and a concern for improving police interactions in their community.

On police abuse and Black Lives Matter: Talking Asian to Asian i... <https://www.tcdailyplanet.net/apis4blacklives-mn-north-minneapolis/>  
Further the door-knocking conversations opened up dialogue about how Jamar Clark and police brutality/abuse/discrimination are relevant to API residents of North Minneapolis and their experiences with the police. Some residents commented on how their elected officials should be doing more to hold the police accountable. Many residents stated that they hold a respect for authority, but also hold the belief that their elected officials should represent them and use their tax dollars effectively for the benefit of their community. Others recalled the killing of Fong Lee (<http://www.hmongtimes.com/main.asp?SectionID=31&SubSectionID=190&ArticleID=1902>) by the police in 2006, and connected that incident to Jamar Clark and the need for police accountability. All residents expressed a desire to have further conversations, highlighting the need to create space for further engagement at a community level in an accessible way for all residents, especially those in marginalized groups.

During the door-knocking, volunteers encountered non-English speaking residents who knew nothing about Black Lives Matter, Jamar Clark or the 4th Precinct Occupation happening right in their own neighborhood. In debriefing after the door-knocking, our collective discussed potential reasons why some Asian residents had no knowledge of incidents or events happening in such close proximity to their homes. Some suggested that Asian residents, especially elderly Hmong individuals, do not have access to local news or critical analysis and dialogue around the policy-making that directly affects marginalized communities. Volunteers also cited a lack of ongoing, intentional engagement by elected officials, organizations, and activists with Asian residents, young and old, around social and political issues. These factors especially hinder access and active participation for those people in non-English speaking, elderly, immigrant, and refugee communities.

APIs4BlackLives-MN organized this survey not only to gather Asian perspectives on police abuse and Black Lives Matter, but also to further engage the Asian community in issues of racial and social justice. The stereotyped narrative (<https://www.facebook.com/DefineAmerican/videos/945001442248943/>) that portrays Asians as apolitical and safe within invisibility undermines community collaboration in calling for police accountability. We understand that the model minority stereotype (<http://everydayfeminism.com/2015/04/dismantle-model-minority-myth/>) acts as a wedge to divide communities of color. We recognize that though Asian and Black communities have different experiences of oppression, we share in common the work of fighting to end police abuse and discrimination.

Strong communities and effective collaboration are grounded in building relationships upon similarities and across differences. These doorknocking conversations highlight the importance of not only statistics, but also personal narratives. Sharing our stories illuminates the interior aspects of data that numbers cannot convey and enables us to connect on a human level. As a coalition, we recognize that much of our work begins with holding these conversations so that we are able to build necessary and powerful connections with each other.

**APIs4BlackLives-MN is planning another door-knock in St. Paul this March to continue these conversations. Sign up and volunteer here: <http://bit.ly/AsianSTPHopesDreams>**

For more information and/or to become involved with APIs4BlackLivesMN find us on our Facebook page: APIforBlackLivesMattersMN (<https://www.facebook.com/APIforBlackLivesMattersMN/>) or email us at: [api4blacklivesmn@gmail.com](mailto:api4blacklivesmn@gmail.com)

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**From:** Chuck Turchick

**Sent:** Tuesday, April 18, 2017 3:39 PM

**To:** Melissa Wojnaroski

**Cc:** Hodges, Betsy A.; Archbold, Nicole L.; Yang, Blong; Gordon, Cam A.; Johnson, Barbara A. - City Council; Palmisano, Linea; Quincy, John; Reich, Kevin A.; Jaafar, Imani S.; Case, Jason; Office of Janeé Harteau; Amy Crawford;

**Subject:** Re: Minnesota Advisory Committee -- Civil Rights and Police Practices in Minnesota

Dear Members of the Minnesota Advisory Committee to the U.S. Commission on Civil Rights,

Regarding your March 21, 2017, public meeting on the topic of Civil Rights and Police Practices in Minnesota, I submit the following comments.

I believe Recommendation 1.3 of the [Final Report of The President's Task Force on 21st Century Policing](#), and Action Item 1.3.2 of that Report are the keys to relations between the community and the police. The

Recommendation reads:

**Law enforcement agencies should establish a culture of transparency and accountability in order to build public trust and legitimacy. This will help ensure decision making is understood and in accord with stated policy.**

And the Action Item reads:

**When serious incidents occur, including those involving alleged police misconduct, agencies should communicate with citizens and the media swiftly, openly, and neutrally, respecting areas where the law requires confidentiality.**

The opening paragraph of the Report's Executive Summary has it right when it states:

Trust between law enforcement agencies and the people they protect and serve is essential in a democracy. It is key to the stability of our communities, the integrity of our criminal justice system, and the safe and effective delivery of policing services.

Similarly for the first sentence of "Pillar One: Building Trust and Legitimacy":

Building trust and nurturing legitimacy on both sides of the police/citizen divide is the foundational principle underlying the nature of relations between law enforcement agencies and the communities they serve.

Recommendation 1.3 is correct in calling for a "culture of transparency." Without transparency, accountability and trust are fantasies. Transparency, in particular transparency regarding the handling of allegations of police misconduct, is the sine qua non of building community trust in the police.

As Chair Korbel well knows, transparency was lacking in creating the latest Minneapolis version of civilian oversight of allegations of police misconduct. The current oversight structure, which

replaced the previous Minneapolis Civilian Police Review Authority (CRA), was designed in secret, not even involving the members of the then-existing CRA Board, let alone the general public. Chair Korbel was the central person in that process. Although she has said she would do it differently today, many believe the well was poisoned. In part because of that secret design process, many have little faith in the current civilian oversight entities and procedures in Minneapolis.

Probably more important, Minnesota data practices laws (See [Minn. Stat., Chap. 13](#)) preclude any real transparency in the handling of complaints of police misconduct. Some states have much less stringent laws regarding the privacy of police officers. For example, the Atlanta Citizen Review Board has the discretion to hold public hearings regarding complaints against police officers, even with the possibility of the Board choosing to discuss cases in sessions open to the public. (Here is a link to its [Policies & Procedures Manual and Bylaws](#).) I have heard that Florida statutes allow for such similar openness.

Everyone claims they're for greater transparency. In Minneapolis, Police Chief Harteau's "MPD 2.0" model of policing is premised on "commitment, integrity, transparency." The promoters of the latest civilian oversight process in Minneapolis claimed it would bring more transparency. In discussions leading up to the adoption of body-worn cameras, even Lt. Bob Kroll, the president of the Police Officers' Federation of Minneapolis -- the city's police officers' union -- called for the utmost transparency and accessibility to the public of body camera footage.

Seemingly, when it comes to police accountability, "transparency" is the buzzword for all parties. But more often than not, the level of transparency needed to build public trust is deemed idealistic, if not fanciful. No one seems willing to call for the changes necessary to create transparency that is truly meaningful and consequential.

If Minneapolis and other cities in Minnesota are truly interested in "establish[ing] a culture of transparency and accountability" within our law enforcement agencies, we must seek to change the Minnesota Data Practices Act. Without that, we're spinning our wheels. Maybe an exception to treating complaints against officers differently from complaints against other public employees could be justified because 1) law enforcement officers are uniquely given the authority to use lethal force; and 2) community-police relations are at such a low point in this country and have often led to eruptions in our inner cities.

I believe the greatest possible transparency in the handling of complaints about police officers' conduct is an absolute key to building public trust in our police departments. Without such openness, the goal of improving community-policy relations is illusory. The "culture of transparency" cannot be a petri dish culture in the lab; it needs to exist in the real world. Changes in Minnesota's Data Practices Act is essential to achieving these goals. By itself, it may not be enough, but it is surely a pre-requisite.

I look forward to reading your report.

Sincerely yours,  
Chuck Turchick

Dissenting Statement of Kirk Kolbo and Ryan Check; Separate Statement of Kenneth Doyle

We compliment the Committee for its hard work in preparing the report on Minnesota policing practices, which includes many insightful and helpful ideas. Nonetheless, two of us have substantial objections to some aspects of the report and so voted against its adoption; another of us voted to adopt the report, but with reservations. The most important of these objections and reservations are set forth herein and can be summarized as follows: The report: (1) is less than objective and complete in the discussion of recent high-profile police shootings and ensuing protests; (2) fails to examine the issue of police use of force in the context of its overall incidence or in relation to well known patterns of criminal offending; (3) misuses anecdotal evidence and statistical disparities to make unwarranted findings on the extent of discriminatory treatment by law enforcement; and (4) unwarrantedly disparages certain policing strategies and practices which have proven effective in reducing crime rates. These shortcomings may undermine the utility and objectivity of the report on an important civil rights issue.

In the discussion of the Clark and Castile shootings and protests that followed, the report includes little narrative of the unlawful and sometimes violent acts of protestors, a lack of balance that threatens the credibility of the report as a whole. These included an 18-day illegal occupation of the grounds of the Minneapolis Police Department's Fourth Precinct;<sup>1</sup> incidents in which protestors threw construction debris, fireworks, rocks, and Molotov cocktails at officers;<sup>2</sup> several occasions when protests shut down city streets and freeways;<sup>3</sup> a disruption of operations at the Mall of America and Minneapolis-St. Paul International Airport;<sup>4</sup> and a demonstration at the Minnesota State Fair where marchers chanted "Pigs in a blanket, fry em like bacon!"<sup>5</sup>

For all that history, however, the report's discussion of misconduct and the nearly one hundred references in it to the importance of establishing "trust" between communities and law enforcement are framed as if the problem and solution reside with one side only—the police. The kinds of incidents described above and the failure to condemn them are contributors to a breakdown of trust. Even worse, they can incite or encourage criminal activity, including acts of violence against police officers, as found by the FBI Assailant Study referred to in the report. The phenomenon is part of the "Ferguson effect" briefly but incompletely discussed in the report; negative and false narratives about police and the loss of public support that follows can discourage legitimate, pro-active policing activities, with a consequence that crime goes up.<sup>6</sup>

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<sup>1</sup> "The Jamar Clark Shooting: A Timeline," *Minneapolis Star Tribune*, March 30, 2016, available at <http://www.startribune.com/the-jamar-clark-shooting-a-timeline/368412761/#1>.

<sup>2</sup> *Ibid.*; See also Libor Jany, "Two Officers Slightly Injured by Fireworks in Confrontation Outside North Minneapolis Police Station," *Minneapolis Star Tribune*, June 22, 2017, available at <http://www.startribune.com/two-officers-slightly-injured-by-mortar-outside-north-minneapolis-police-station/430224283/>; "Protests Over Castile, Police Shootings Continue for 5th Day," WCCO CBS Minnesota, July 11, 2016, available at <http://minnesota.cbslocal.com/2016/07/11/5th-day-protests-castile/>.

<sup>3</sup> *Ibid.*

<sup>4</sup> "The Jamar Clark Shooting: A Timeline," *supra* note 1.

<sup>5</sup> "Black Lives Matter Chant Called 'Disgusting' by Police Leader," *CBS Minnesota*, August 30, 2015, available at <http://minnesota.cbslocal.com/2015/08/30/black-lives-matter-chant-called-disgusting-by-police-leader/>.

<sup>6</sup> Heather MacDonald, "The Ferguson Effect Lives On," *City Journal*, December 23, 2016, available at <https://www.city-journal.org/html/ferguson-effect-lives-14919.html>.

As the report notes, the Clark and Castile shootings were an impetus to the Committee's study of the civil rights aspects of Minnesota police practices. What the evidence shows, however, is that neither those shootings nor the more recent shooting of Justine Damond suggests a simple racial pattern. While Clark and Castile were black, in only one of the three shootings were the involved officers white, and in the Damond shooting, the victim was white and the officer was black. Nor does a pattern emerge from the official handling of the cases. The Damond case remains under investigation at the time of this writing, but the Clark shooting was determined to be a justifiable homicide by all three federal, state, and local agencies that investigated the matter; while in Castile's case, officer Yanez was prosecuted for manslaughter and acquitted by a racially diverse jury. Even so, Yanez was fired from his job and the city that employed him paid a \$3 million settlement to Castile's family.

Focusing on a few incidents also yields little information about trends or the frequency of deaths resulting from police shootings or other uses of force. The report directs much attention to the Minneapolis Police Department, but for the past ten years the number of fatal shootings by Minneapolis police has averaged less than one per year, with no upward trend.<sup>7</sup> Both Minneapolis and Saint Paul recently inaugurated websites that report detailed crime and use of force data. They show that in 2016, Minneapolis police were involved in nearly 350,000 service calls, with just 0.27% resulting in use of force, and only two incidents involving officer use of firearms.<sup>8</sup> St. Paul Police Chief Todd Axtell testified that his police department makes nearly 300,000 calls per year, with just 0.2% resulting in use of force.<sup>9</sup>

The report mistakenly assumes that racial disparities in stops, arrests, and incarceration rates are evidence of discriminatory treatment by law enforcement. The evidence has long shown, however, that patterns of criminal offending are not the same across racial lines. Much of the data and social science on the subject are closely examined in the classic work by University of Minnesota Professor Michael Tonry, *Malign Neglect: Race, Crime, and Punishment in America*. Summarizing the research, Tonry reported "a near consensus among scholars and policy analysts that most of the black punishment disproportions result not from racial bias or discrimination within the system but from patterns of black offending and of blacks' criminal records."<sup>10</sup> Regarding discriminatory treatment, Tonry wrote that "[v]irtually every sophisticated review of social science evidence on criminal justice decision making has concluded, overall, that the apparent influence of the offender's race on official decisions is *slight*." (Emphasis added).<sup>11</sup> Instead, "racial differences in patterns of offending, not racial bias by police and other officials, are the principal reason that such greater proportions of blacks than whites are arrested, prosecuted, convicted and imprisoned."<sup>12</sup>

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<sup>7</sup> Jeff Hargarten, "Minneapolis Police Shootings Since 2000: A Deeper Look at Who and Where," *Minneapolis Star Tribune*, July 27, 2017, available at <http://www.startribune.com/minneapolis-police-shootings-since-2000-a-deeper-look-at-who-and-where/435882213/>.

<sup>8</sup> <http://www.insidempd.com/2017/11/14/mpd-launches-new-public-use-force-dashboard/>.

<sup>9</sup> Axtell Testimony, *Transcript* p. 253, lines 06-08.

<sup>10</sup> Michael Tonry, *Malign Neglect: Race, Crime, and Punishment in America* (1995) p. 49.

<sup>11</sup> *Ibid.* p. 50.

<sup>12</sup> *Ibid.* p. viii.

Tonry and others have also confirmed that criminal offending and victimization are predominately intra-racial.<sup>13</sup> Data from the Bureau of Justice Statistics' National Crime Victimization Survey for the years 2012-2015 show that for black victims of violent crime, the offender in 63% of the cases was black.<sup>14</sup> Crime statistics from Minneapolis bear this out. Crime occurs at disproportionately higher levels in Minneapolis neighborhoods with large minority populations. Crime rates in the Minneapolis Near North and East Phillips neighborhoods are 6 to 10 times higher than in Linden Hills and Fulton;<sup>15</sup> in 2016, 37% of reported violent crimes in the city occurred in the Fourth Police Precinct, which contains less than 20% of the city's total population;<sup>16</sup> and from 2009 through 2014, 64% of all "shots fired" in Minneapolis occurred in the north side.<sup>17</sup> The report simply ignores the data and voluminous social science in positing that racial disparities can be explained to any significant degree by discriminatory treatment on the part of law enforcement.

Blaming racial disparities in crime and incarceration rates on discriminatory treatment by law enforcement, in the face of substantial evidence to the contrary, is one of the main defects of the Committee's report. Another is the heavy reliance on anecdotal reports, which tell one side's story only, and which the Committee was in no position to evaluate. These errors led to others, including the report's acceptance of "implicit bias" as an explanation for the disparities discussed above, again despite recent and growing social science research casting serious doubts on the validity of "implicit bias" as a concept and on the testing and training to supposedly deter and correct it.<sup>18</sup> The report's false assumptions are probably also responsible for the unjustified criticisms of policing strategies like "broken windows" and "hot spots" policing, both of which have been proven to be effective in reducing crime.<sup>19</sup>

For the foregoing reasons, we believe the report places undue emphasis on police practices as contributors to mistrust between minority communities and the police and as a primary explanation for disparities in interactions between people of color and law enforcement. The risk is that actions taken based on an overemphasis on police practices as a cause of criminal outcomes in minority communities could lead to a backing away from legitimate and effective policing strategies and activities, with an ironic, tragic, and unintended consequence that criminal offending and victimization go up, especially in those minority communities that already are the most afflicted by crime.

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<sup>13</sup> Ibid. pp. 42, 50.

<sup>14</sup> Press Release, Bureau of Justice Statistics, October 19, 2017, available at <https://www.bjs.gov/content/pub/press/rhovo1215pr.cfm>.

<sup>15</sup> Jeff Hargarten, "Minneapolis Police Shootings Since 2000: A Deeper Look at Who and Where," *supra* note 7.

<sup>16</sup> Minneapolis Police Department Weekly Crime and Arrest statistics, available at [http://www.ci.minneapolis.mn.us/police/statistics/crime-statistics\\_codefor\\_arrests](http://www.ci.minneapolis.mn.us/police/statistics/crime-statistics_codefor_arrests).

<sup>17</sup> Andy Mannix & Tom Nehil, "Six Years of Shootings: Where and When Gunfire Happens in Minneapolis," *MinnPost blog* (January 18, 2016), available at <https://www.minnpost.com/data/2016/01/six-years-shootings-where-and-when-gunfire-happens-minneapolis>.

<sup>18</sup> Jesse Singal, "Psychology's Favorite Tool for Measuring Racism Isn't Up to the Job," *The Cut*, January 11, 2017, <https://www.thecut.com/2017/01/psychologys-racism-measuring-tool-isnt-up-to-the-job.html>.

<sup>19</sup> George L. Kelling & William J., Bratton, "Why We Need Broken Windows Policing," *City Journal* (Winter 2015), available at <https://www.city-journal.org/html/why-we-need-broken-windows-policing-13696.html>; "Hot Spots Policing," *Center for Evidenced-Based Policing*, available at <http://cebcp.org/evidence-based-policing/what-works-in-policing/research-evidence-review/hot-spots-policing/>.

**Minnesota Advisory Committee to the  
United States Commission on Civil Rights**



**U. S. Commission on Civil Rights Contact**

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