

Briefing Report



Implicit Bias and Policing in Communities of Color in Delaware

**Report of the Delaware Advisory Committee to the
U.S. Commission on Civil Rights**

(January 2020)

The United States Commission on Civil Rights

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Letter of Transmittal

Delaware Advisory Committee to the
U.S. Commission on Civil Rights

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The Delaware Advisory Committee, as part of its responsibility to advise the Commission on civil rights issues within the state, submits this report, *Implicit Bias and Policing in Communities of Color in Delaware*. The report was adopted by the Advisory Committee by majority vote on January 10, 2020—the vote was eight to three.

Sincerely,

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* Stephanie Agnew, a masters degree student, performed her clinical rotation with the agency's Regional Programs Coordination Unit, through the University of Chicago School of Social Administration.

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I. INTRODUCTION

Law enforcement officials are, above all, public servants. Although these positions are sometimes dangerous, often underpaid, and always stressful, they are essential to achieve vitally important community service and public safety work. Nonetheless, the recent and well-documented protests opposing police brutality, shootings, and excessive use of force – particularly toward young, black citizens – have exposed a deep tension between some communities of color and police across the country. While similar situations in Delaware may not have gained quite as much attention as those in places like Chicago, Baltimore, or Ferguson (with the killings of Laquan McDonald, Freddie Gray, and Michael Brown, respectively), the state’s high crime rates in urban centers suggest an absence of positive police-community relations. There are many potential causes of crime, including unemployment, poverty, and lack of community bonds, making this issue very complex.¹ Among these many causes, poor police-community relations can lead to miscommunication, violence, contentious interactions between police and community residents – often those of color – and to higher crime rates, further impairing the implementation of approaches that could effectively improve public safety.

Because research indicates that some of the disproportionality in representation within the criminal justice system may be attributed to stereotypes affecting decision-making,² the Delaware State Advisory Committee (Committee) to the United States Commission on Civil Rights (Commission) chose to explore the nature and possible role of *implicit bias* in policing activities, strategies, and engagement in communities of color. Although implicit bias is likely part of the human condition and not necessarily the result of explicit racial animosity, experts were invited to discuss implicit bias as well as the possible impact it may have on community-police relations. On Wednesday, November 1, 2017, the Delaware Advisory Committee held a hearing at Widener University Delaware Law School in Wilmington, Delaware, to better understand the issues and challenges involved in community-police relations in communities of color, the Committee gathered input from a broad range of stakeholders, including neighborhood leaders, police officers, government officials, academics, and civil rights advocates, and more. The Committee invited 21 subject-matter experts – grouping them on five panels. In addition, during the Public Comments portion of the agenda, members of the public made brief statements to the Committee immediately after the panel presentations concluded.

When going through this report, the reader is reminded that there is growing and extensive social science research about how implicit bias may impact policing in communities of color. In addition, a *CBS This Morning* report, stated that “(E)ighty-five percent of training academies that participated in the government-funded national survey by the International Association of Directors of Law Enforcement Standards and Training (IADLEST) said they have increased

¹ Ronald L. Akers, Christine S. Sellers, and Wesley G. Jennings, *Criminological Theories: Introduction, Evaluation, and Application* (New York, NY: Oxford University Press, 2016).

² Jennifer L. Eberhardt, P.G. Davies, Valerie J. Purdie-Vaughns, and Sheri Lynn Johnson, “Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes.” *Psychological Science* 17,5 (2006).383-386, <https://journals.sagepub.com/doi/abs/10.1111/j.1467-9280.2006.01716.x>.

‘implicit bias’ training for police recruits since 2015.”³ The Committee uses the terms of art and reports the results emanating from the research. It is not the purpose of the Committee’s review to assign blame to any stakeholders, including law enforcement – blame assessment is a matter for the triers-of-fact. The purpose of this report is to advise the Commission about what the Committee learned from its review, including testimony given at the hearing, as well as findings from prior procedural examinations and research that guided its review of these issues in the Delaware. The Committee’s hope is that the information in this report will be used toward the goal of improving conditions for Delaware’s communities of color and enhancing the safety of law enforcement officers. The Committee now reports results of its review to the Commission, including findings and recommendations intended to encourage stakeholders to make important adjustments to police procedures that require greater collaboration and communication than have been found in most cities across the U.S.⁴

II. BACKGROUND

A. Racial Disparities in the Justice System

1. National Overview

The civil rights laws of the 1960s were enacted to prohibit long-standing public policies and private practices that perpetuated discrimination and segregation. Employment, restaurants, hotels, and other places of public accommodation were segregated throughout the U.S.⁵ In the Jim Crow South, it was unthinkable for blacks to consider residing in a white neighborhood; in the North, African-American families were excluded from white neighborhoods by discriminatory practices, many of which were imposed by the racially restrictive covenants in federally insured mortgages.⁶ Even ten years after the *Brown v. Board of Education* (1954) ruling that state-sanctioned segregation of public schools violated the U.S. Constitution, more than 98% of black children in the American South still attended segregated schools.⁷ Whites and blacks were born in separate hospitals, educated in separate schools, and buried in separate graveyards.

³ “A rare look inside NYPD’s implicit bias training.” Cbsnews (August 17, 2018), <https://www.cbsnews.com/news/nypd-rare-look-inside-police-implicit-bias-training/>.

⁴ For review of policy practices broadly, See, “U.S. Department of Justice, COPS, *Final Report of the President’s Task Force on 21st Century Policing*, May 2015, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁵ Taylor Branch, *At Canaan’s Edge: America in the King Years, 1965-68* (Simon & Schuster, 2006); John Lewis, *Walking with the Wind: A Memoir of the Movement* (Harvest books, 1998); Leon F. Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* (New York, NY: Alfred A. Knopf, 1998).

⁶ Melvin L. Oliver and Thomas M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality* (New York, NY: Routledge, 2006).

⁷ Sarah Pruitt, “Brown v. Board of Education: The First Step in the Desegregation of America’s Schools.” history.com. <https://www.history.com/news/brown-v-board-of-education-the-first-step-in-the-desegregation-of-americas-schools>. (last accessed August 31, 2018).

Anti-discrimination laws typically do not address a particularly harmful and frequent type of discrimination experienced by racial minorities: *discrimination by a person because of their subconsciously held prejudices*. Cases interpreting civil rights laws tend to assume that unequal treatment is intentional, which allows for non-white racial groups to be subjected to disparate and less favorable treatment in public and private contexts, with very limited ability for recourse.

Research shows that people of color are more likely than whites to be perceived as threats or criminals.⁸ The historic criminalization of race and poverty in the American socio-political context (including by law enforcement) has exacerbated unequal rates of justice system involvement across racial, ethnic, and economic lines. For instance, 1-in-3 black and 1-in-6 Latino males born in 2001, respectively, will be imprisoned in their lifetime, whereas for white men that rate is at 1-in-17. These disparities are similarly, if not more, striking for women: 1-in-111 white women, 1-in-45 Latinas, and 1-in-18 black women of the same age will be imprisoned.⁹ Research increasingly establishes that policing strategies in communities of color can contribute to these disparities; in some communities, policing is more aggressive (e.g., using strategies such as stop-and-frisk). The use of forceful, harassing, and violent policing tactics, especially in those communities with persistently high rates of violent crime,¹⁰ have contributed to a collective distrust of police officers and law enforcement, as an institution, by many persons and communities of color. At the same time, many residents living in these areas want a stronger, more visible police presence to make their neighborhoods safer places. Therefore, a strong, trusted relationship between police and community is essential for public safety.

2. Subconscious Stereotypes and Implicit Biases

A substantial body of empirical and theoretical work in cognitive psychology has suggested that much of the disproportionality in the criminal justice system could be attributable to consciously- and unconsciously-learned and implicitly-held biases. Implicit biases are socio-cultural stereotypes and notions about certain individuals or groups that are internalized by most – if not all – people, that have the potential to affect decision-making at every stage of the criminal justice process. These biases exist and operate at a subconscious level, without the perpetrator’s awareness of the source.

Much of the discriminatory attitudes or actions that occur may not be the result of conscious animosity. In *Blink*¹¹ Malcolm Gladwell explains the psychological processes of intuition and instinct, examining how we make split-second decisions and judgments and how the ability that

⁸ Michael D. White and Henry F. Fradella, *Stop and Frisk: The Use and Abuse of a Controversial Policing Tactic* (New York, NY: NYU Press, 2016).

⁹ The Sentencing Project, *Report of the Sentencing Project to the United Nations Human Rights Committee Regarding Racial Disparities in the United States Criminal Justice System*, p. 1 (2013), <https://www.sentencingproject.org/wp-content/uploads/2015/12/Race-and-Justice-Shadow-Report-ICCPR.pdf>.

¹⁰ U.S. Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department*, 2015 (hereafter cited as CRD, *Investigation of the Ferguson Police Department*).

¹¹ Malcolm Gladwell, *Blink: The Power of Thinking Without Thinking* (New York, NY: Back Bay Books, 2005).

makes us more likely, to accurately read a dangerous situation or an ill-intentioned person, is the same ability that makes us unconsciously racist, sexist, or otherwise prejudiced, even if we consciously espouse other views.

The “hidden brain”¹² is what Shankar Vedantam calls a range of brain functions, emotional responses, and cognitive processes that happen outside our conscious awareness but have a decisive effect on how we behave. The hidden brain decides whom we fall in love with, whether we should convict someone of murder, and which way to run when someone yells “Fire!” The hidden brain can also be deliberately manipulated to convince people to vote against their own interests. But the most disturbing thing is that it does all this without our knowing. Hamilton Krieger¹³ explains, decision-making relies on “categorization”—the grouping of like objects together—which is a fundamental a part of the process of human cognition.

Categorization simplifies the task of processing and retaining information. It allows individuals to identify objects, make predictions about future events, infer the existence of unobservable traits and to attribute causation to specific events. Categorization operates at a subconscious level. Individuals perceive, categorize, and evaluate information differently depending on the way in which the information is presented and the context in which it is received. Categorization can make it difficult for an observer to recognize a person’s individual characteristics; when an individual is seen as a member of a certain socially constructed group (i.e. race), perceptions about that group’s characteristics and behavior influence judgments made about the individual. The danger, then, of categorization is that it can lead to judgment errors that bias decision-making.

Stereotyping is a form of categorization that involves, among other things, the creation of a mental image of a “typical” member of a particular category. Individuals are perceived as undifferentiated members of a group, lacking significant differences from other individuals within the group. Common traits are assigned to the entire group. When a particular behavior by a group member is observed, the viewer evaluates the behavior through the lens of the stereotype. This causes the observer to conclude that the conduct has empirically confirmed his stereotyped belief about the group. As Armour¹⁴ explains: “Stereotypes consist of well-learned sets of associations among groups and traits established in children’s memories at an early age, before they have the cognitive skills to decide rationally upon the personal acceptability of the stereotypes.” Individuals behave

¹² Shankar Vedantam, *The Hidden Brain: How Our Unconscious Minds Elect Presidents, Control Markets, Wage Wars, and Save Our Lives* (New York, NY: Spiegel & Grau, 2010).

¹³ Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV 1161, 1187 (1995); See also, Tracey G. Gove, “Implicit Bias and Law Enforcement,” *The Police Chief*, October 2011, <https://fipolicing.com/wp-content/uploads/2018/01/press-thepolicechief.pdf>.

¹⁴ Jody Armour, *Stereotypes and Prejudice Helping Legal Decisionmakers Break the Prejudice Habit*, 83 Calif. L. Rev. 733, 741 (describing the case of a 3-year-old child, who upon seeing a black infant said to her mother, “Look mom, a baby maid.” This showed that the child had already developed a stereotyped association between African American women and low-status service occupations.); See also James Jones, “Psychological Knowledge and the New American Dilemma,” *Journal of Social Issues* 54, 4 (1998). 641-62.; Jerry Kang, *Trojan Horses of Race*, 118 Harv. L. Rev. 1489 (2005); Anthony G. Greenwald and Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94. CALIF. L. REV. 945-58 (2006).

in ways that demonstrate that they are heavily influenced by stereotypes, including even those that they consciously disavow.¹⁵ Stereotypes can be so deeply internalized that they persist regardless of a person's awareness of information that directly contradicts the stereotype.¹⁶ Hamilton Krieger & Fiske¹⁷ explain:

Subtle forms of intergroup bias can infiltrate decision making long before any decision is made. These biases can latently distort the perceptual data set on which that decision is ultimately premised. Often operating outside of the decision maker's attentional focus, and therefore outside his or her awareness, stereotypes can covertly but powerfully influence the way information about the stereotyped target is processed and used. They can shape the interpretation of incoming information, influence the manner in which that information is encoded into and stored in memory, and mediate the ease or difficulty with which the information is retrieved from memory and used in social judgment. A decision maker can act because of or on the basis of a target person's race, sex, or other group status, while subjectively believing that he or she is acting on the basis of some legitimate, nondiscriminatory reason.

There are authors who posit that the existing research permits neither the prediction nor the identification of discriminatory conduct at the individual level. They assert that the research on unconscious bias does not permit an inference of unlawful racial discrimination in any particular case as there may be other explanations for the disparities.¹⁸ A thorough and exhaustive review of the social science literature authored by John Jost and others was published in 2009; after reviewing hundreds of studies conducted over more than three decades, the authors concluded that "the existence of implicit bias is beyond a reasonable doubt."¹⁹

Many African-Americans perceive that being young, black, and male has become an acceptable argument for "probable cause" to stop, search, arrest, and detain millions of black boys and men every year.²⁰ Decisions about whom to arrest, how much force to use, what charges should be

¹⁵ Gary Blasi, *Advocacy Against Stereotype: Lessons from Cognitive Social Psychology*, 49 UCLA L. REV. 1241, 1250 (2002); Jerry Kang, *Trojan Horses of Race*, 118 Harv. L. Rev. 1489; John F. Dovidio, Samuel L. Gartner, and Kerry Kamakami, "Implicit and Explicit Prejudice and Interracial Interaction," *Journal of Personality and Social Psychology* 82, 1 (2002).

¹⁶ Peggy Davis, *Law as Microaggression*, 98 Yale L. J. 1559, 1561-62 (1989).

¹⁷ Linda Hamilton Krieger and Susan T. Fiske, *Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment*, 94 Calif. L. Rev. 997, 1034 (2006).

¹⁸ Amy L. Wax, *Supply Side or Discrimination? Assessing the Role of Unconscious Bias*, 83 Temp. L. Rev. 877, 889 (2011); Gregory Mitchell and Philip E. Tetlock, *Antidiscrimination Law and the Perils of Mindreading*, 67 Ohio St. L. J. 1023, 1062-65 (2006).

¹⁹ John T. Jost, et al., "The Existence of Implicit Bias Is Beyond a Reasonable Doubt: A Refutation of Ideological and Methodological Objections and Executive Summary of Ten Studies That No Manager Should Ignore," *Research in Organizational Behavior* 29 (2009).

²⁰ Patrick J. Carr, Laura Napolitano, and Jessica Keating, "'We Never Call the Cops and Here is Why': A Qualitative Examination of Legal Cynicism in Three Philadelphia Neighborhoods." *Criminology: An*

lodged, as well as jury verdicts and more, are influenced by implicit biases.²¹ In the criminal justice system, such biases obviously and inarguably affect policing in communities of color. Even well-meaning officers are vulnerable to using harsher force against people of color than against whites in similar circumstances. Many people, including police officers, harbor strong associations between blacks, weapons, crime, and aggression.²² The stereotype of young black men as dangerous criminals is deeply embedded in the American psyche. The term “aversive racism” has been used to describe the conduct of individuals who support policies that promote racial equality and regard themselves as not prejudiced, but act in ways that disadvantage minorities.

Researchers report that such persons often experience feelings of uneasiness or fear in the presence of people of color. Their negative attitudes towards minorities usually go unacknowledged because these attitudes are in conflict with the person’s conscious egalitarian value system. The negative attitudes of aversive racists are rooted in cognitive, motivational, and socio-cultural forces. Aversive racists typically do not discriminate against certain racial groups (i.e. African-Americans, Hispanics) when doing so would be obvious to themselves and others, but are likely to engage in discrimination when there are “race-neutral” justifications for their behavior.²³ In a seminal and frequently cited study²⁴ concerning the provision of emergency assistance, white bystanders were as likely to help a black victim as a white victim when they were the only witness to an emergency and their personal responsibility was clear. In circumstances in which there were other witnesses to the emergency, they would justify not helping on the belief that someone else would intervene. In this situation, whites helped the black victim half as often as they helped the white victim and this racial bias was expressed in a way that could be justified on the basis of a race-neutral reason. Recognizing the influence of subconscious stereotypes is an important starting point in reforming the criminal justice system.

Interdisciplinary Journal. 45 (2007). 445-480; Jacinta M. Gau and Rod K. Brunson, “Procedural Justice and Order Maintenance Policing: A Study of Inner-City Young Men’s perceptions of Police Legitimacy.” *Justice Quarterly* 27, 2 (2010). 255-279; Victor M. Rios, *Punished: Policing the Lives of Black and Latino Boys* (New York, NY: NYU Press, 2011).

²¹ Nicole Gonzalez Van Cleve, *Crook County: Racism and Injustice in America’s Largest Criminal Court* 6 (Stanford, CA: Stanford University Press, 2017).

²² Kenneth Lawson, *Police Shootings Of Black Men and Implicit Racial Bias: Can’t We All Just Get Along?*, 37 U. HAW. L. REV. 339, 353-54 (2015); Jasmin B. Gonzales Rose, *Racial Character Evidence In Police Killing Cases*, 2018 WIS. L. REV. 369, 405-06 (2018); Devon W. Carbado and Patrick Rock, *What Exposes African Americans to Police Violence?* 51 HARV.C.R.-C.L. L. REV. 159, 167-169 (2016); Zackory T. Burns and Sachiko V. Donley, *Social Evaluative Mechanics: A Potential Psychological Mechanism Coloring Police-Public Encounters*, 8 UC Irvine L. Rev. 1, 4 (2018).

²³ Samuel L. Gaertner and John F. Dovidio, “Aversive Racism and Selection Decisions” *Psychological Science* 11, 4 (2000). 315-319.

²⁴ Samuel L. Gaertner and John F. Dovidio, *Reducing Intergroup Bias: The Common Ingroup Identity Model* (Psychology Press, 2000), 24-26.

B. Race and Policing in Delaware

Delaware is, unfortunately, no exception to the historically tenuous relationships between police and communities of color. Delaware has the seventeenth highest state imprisonment rate in the country, with 440 people of every 100-thousand imprisoned, and black Delawareans are 4.8-times more likely than whites to be in prison.²⁵ A recent evaluation of the Delaware Justice System finds that “(d)ata from 2012 to 2014 show that African Americans represent 22% of the state’s general population, 42% of arrestees, 42% of criminal dispositions, 51% of incarceration sentences, and 57% of Delaware’s incarcerated population.”²⁶ The authors of the report suggest that the racial disparities at the arrest stage drive the racial disparities seen at other stages in the Delaware criminal justice system. While the state has experienced some encouraging changes in crime rates over the past several years, with the overall amount of serious crime decreasing by 12% between 2013 and 2017 and violent crime decreasing by 11%, homicide rates increased by 20% during the same time period.²⁷

The Committee’s review focused primarily, but not exclusively, on Wilmington, Delaware, for a number of reasons, including the city’s crime rates. While the overall rate of serious crimes in Wilmington decreased 8.28% between 2013 and 2017, the city saw a 70% increase in homicides; an 84% increase in forcible sex offenses, and a 17% higher rate of assault offenses involving firearms during the same time period.²⁸ The demographics of Wilmington citizens are also noteworthy. In 2010, 67.4% of residents self-identified as non-white.²⁹ Between 2000 and 2010 the Hispanic or Latino populations rose by 22.9% and the white population decreased by almost 11%.³⁰ Poverty is rampant in the city. Between 2006 and 2010, the median annual income per capita was as low as \$25,228 per family, and a staggering 71.4% of black individuals in the city were living below the poverty level.³¹ Further, almost 54% of Wilmington residents were spending 30% or more of their income on housing expenses.³² Economic hardship can contribute significantly to crime involvement – exacerbating tensions between the police and the community.

²⁵ See, e.g., The Sentencing Project, “The Facts: State-by-State Data,” [sentencingproject.org](https://www.sentencingproject.org/the-facts/#rankings?dataset-option=SIR), <https://www.sentencingproject.org/the-facts/#rankings?dataset-option=SIR> (last accessed Sept. 19, 2019).

²⁶ See, e.g., John M. MacDonald and Ellen A. Donnelly, “Evaluating the Role of Race in Criminal Justice Adjudications in Delaware,” (2016), https://courts.delaware.gov/supreme/docs/DE_DisparityReport.pdf.

²⁷ State of Delaware, Statistical Analysis Center, Delaware Criminal Justice Council, and State Bureau of Identification, *Report on Crime in Delaware (2013 – 2017)*, 2018.

²⁸ State of Delaware, Statistical Analysis Center, Delaware Criminal Justice Council, and State Bureau of Identification, *Wilmington Supplement for the Report on Crime in Delaware (2013 – 2017)*, 2018.

²⁹ See United States Census Bureau, *City of Wilmington: Citywide Information Encompassing all Census Tracts and Analysis Areas*. 2010. <https://www.wilmingtonde.gov/home/showdocument?id=336>.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

One recent instance of such conflict in Wilmington is explained in a 2016 investigative report by the Delaware Department of Justice (DOJ)³³ resulting from a police-involved shooting of a black, wheelchair-bound Wilmington man. Jeremy McDole, was killed by officers who responded to an active crime scene, responding to a report that shots were fired. The investigators used cellphone video to conclude that three of the four officers involved were legally and procedurally justified in their use of force. As to the fourth officer, the Delaware DOJ concluded that his actions “demonstrated extraordinarily bad judgment” and indicated a troubling realization: McDole’s death was “the second use-of-force investigation that [the officer] has been involved in over the past six years.” The Report explains that McDole’s hands were visible “on the arms of his wheelchair when he was shot,” but that the officer “gave Mr. McDole two commands to ‘show me your hands’ in the space of approximately two seconds before he discharged his shotgun.” These reasons led the Delaware DOJ to conclude, among other things, that the officer’s decision “to discharge his firearm at Mr. McDole after giving Mr. McDole only two seconds to respond to verbal instructions” could absolutely constitute as illegal reckless conduct. The officer was not criminally charged.

Notwithstanding the procedural, legal, or moral justifications (or lack thereof) of this incident, McDole’s death epitomizes a tangible distrust between law enforcement agencies and some communities. A statement by the family expressed: “Trust has been eroded between the police and our community with this shooting,”³⁴ but evidence indicates that this trust was lacking even before the shooting. The *2014 Delaware Politics Survey*³⁵ shows that less than 30% of black respondents agreed with the statement: “Police [treat] racial/ethnic groups equally;” similarly, only 36.4% felt that “officers use the right amount of force.” For white respondents, those numbers were almost double, at 61.3% and 66.1%, respectively, for each question. A mere 25.7% of black Delawareans responded favorably to survey questions asking about agencies’ records of “holding officers accountable,” whereas white individuals reported favorable perceptions 62.1% of the time. Regardless of the subjective nature of these perceptions, the fact that the reporting from white and black citizens were so consistently disparate is an appropriate cause for concern.

Similarly, the Wilmington Public Safety Strategies Commission was established in 2015 and tasked with conducting “a rapid, intensive, and comprehensive examination of public safety strategies in the City of Wilmington.”³⁶ The researchers analyzed, among other data, the community’s input on crime issues, the Wilmington Police Department’s (WPD) approach to such issues, and the possible solutions. This information was collected by way of interviewing neighborhood association leaders, business leaders, the faith community, and other informal leaders from the community; informal survey responses; and feedback gathered at community

³³ Report of the Delaware Department of Justice, “Wilmington Police Department Use of Deadly Force” (2016), <https://www.scribd.com/document/312426381/McDole-Report>.

³⁴ Jacobs & Crumplar, PA, “Statement by the McDole Family to Rebut the Attorney General’s Report” (May 12, 2016), <https://www.delawarepublic.org/post/officers-will-not-be-charged-shooting-death-jeremy-mcdole>.

³⁵ Appendix C: Theodore Davis Jr., “Race Perceptions of Policing in Delaware” (Unpublished Report). Department of Political Science at the University of Delaware. (2017).

³⁶ See, e.g., H.R. Res. 2, <https://cjc.delaware.gov/wilmington-safety-commission/>.

gatherings. In the end, the “views of more than 275 community members who attended the Commission’s public meetings, many of whom addressed the Commission,” and “responses from 150 members of the community who offered to share their views on the crime issues” through surveys, were documented and analyzed.³⁷ The *Final Report to the Wilmington Public Safety Strategies Commission*³⁸ included a summary of the respondents’ views, including (but not limited to):

- WPD is “ineffective and untrustworthy,” “doesn’t care,” and offers “nothing but broken promises, especially when it comes to the homicides and shootings.”
- The department “treats members of the African American Community without respect by being verbally abusive and using intimidation tactics” and there are “disparities and differences in how the blacks are treated versus whites; officers are not invested in the black community.”
- “The black community believes that the officers are sacred and don’t understand them and, as a result, the black community is treated with disrespect;” the community believes that WPD view them as “the enemy,” as “nothing more than criminals; they (the black community) are all drugs abusers and scum.”
- “All African American juveniles are treated as if they are suspects and not citizens of the community,” which “furthers the divide between community and police,” because “police are viewed by segments of the community as enemies and as not to be trusted.”
- Although “segments of the community had excellent relationships with their Community Police Officers,” other residents advised they “had not received the same level of service” and “felt that services are not equitably distributed, and if they are, there is no accountability.”
- Lack of trust between the community and police; drugs; gang violence, murders, and shootings; biased school practices that contribute to unemployment; and an inconsistent, “ineffective policing style” were considered the greatest challenges facing the community and police.

The *Report*³⁹ also included information from Wilmington Police Department staff (from “leadership to rank-and-file officers”), whom the researchers indicate generally recognized the need and opportunity for improvement, and were responsive to the fact that “significant cultural and organizational changes” are only possible with “buy-in from those tasked with the need to lead

³⁷ Final Report to the Wilmington Public Safety Strategies Commission (2015), https://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/WPSSC_Final_Report_3_31_15_min-min.pdf. (hereinafter *Final Report to the Wilmington Public Safety Strategies Commission*).

³⁸ Ibid.

³⁹ Ibid.

and implement those changes.” The WPD faced some notable barriers to improvement, according to the *Final Report to the Wilmington Public Safety Strategies Commission*.⁴⁰ These issues include the “respond-and-react orientation and structure that focuses on resolving calls for service rather than proactively implementing crime reduction strategies;” insufficient deployment of patrol and investigatory officers, even though the department was “sufficiently staffed;” the outdated use of technology to analyze and predict crime, “as well as to provide accountability of its officers;” among other things.

Promisingly, the WPD had implemented over 80% of the recommendations⁴¹ included in the *Final Report*; added 12 officers to the Homicide/Violent Crimes Unit; and “dedicated 25 officers to community policing efforts” by June of 2015.⁴² Since the Delaware Advisory Committee held its Hearing to collect testimony on *Policing in Communities of Color in Delaware* in November of 2017, steps toward improving public safety and community-police relations in Wilmington are apparently being made. Hired in 2017, Wilmington Chief of Police, Robert Tracy has expressed that “his first order of business” was to meaningfully engage with communities to “earn respect, make friends, and understand the economic, education, racial, and peer pressures being felt.”⁴³ Crime statistics as a whole have likewise appeared hopeful,⁴⁴ reflecting that shootings in 2018 were down 60% (the lowest number in 17 years).⁴⁵

C. An Important Juncture for Policing

Policing can more effectively promote public safety if police and communities form effective partnerships.⁴⁶ The 2016 Delaware Department of Justice’s Report⁴⁷ (2016 Report) found “serious deficiencies in the way in which the Wilmington Police Department prepares its police officers to deal with situations [like the one involving] Mr. McDole.” The 2016 Report indicated that the

⁴⁰ Ibid.

⁴¹ Wilmington Police Department, *Wilmington Public Safety Strategy Commission Recommendation Response Document*, <http://www.wilmingtonde.gov/home/showdocument?id=240>.

⁴² See, e.g., Wilmington Police Department. “WPD Comprehensive Public Safety Plan.” [wilmingtonde.gov](http://www.wilmingtonde.gov/government/city-departments/department-of-police/wpd-comprehensive-public-safety-plan). <https://www.wilmingtonde.gov/government/city-departments/department-of-police/wpd-comprehensive-public-safety-plan> (accessed September 19, 2019).

⁴³ See, e.g., Dawn Elyse Warden. “New Police Chief Brings Data Driven Tactics to Wilmington.” *Delaware Today*, January 9, 2019. <http://www.delawaretoday.com/Delaware-Today/January-2019/New-Police-Chief-Brings-Data-Driven-Tactics-to-Wilmington/>.

⁴⁴ See, e.g., WITN22. “Gun Crime is Trending Downward for the First Time in More Than 15 Years.” [witn22.org](http://www.witn22.org). <https://www.witn22.org/2019/01/11/gun-crime-is-trending-downward-for-the-first-time-in-more-than-15-years/> (last accessed September 19, 2019).

⁴⁵ See, e.g., Chris Barrish, “Wilmington shooting, homicide rates plummet” WHYY, January 10, 2019, <https://whyy.org/articles/wilmington-mayor-cites-remarkable-drop-in-gun-violence/>.

⁴⁶ Tom R. Tyler and Yuen J. Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and the Courts* (New York, NY: Russell Sage Foundation, 2002).

⁴⁷ Department of Justice, “Report of the Delaware Department of Justice: Wilmington Police Department Use of Deadly Force,” <https://www.scribd.com/document/312426381/McDole-Report> (last accessed September 19, 2019).

department was fundamentally lacking in terms of appropriate use of force policies and procedures, stating: “[the Department’s] ‘continuum of force’ provisions in its use of force policy are effectively meaningless for police officers.” While police must necessarily be concerned for their personal safety, instances of violent crime against law enforcement officers decreased in Delaware, by 15%, between 2013 and 2017.⁴⁸ It suggests that de-escalation tactics and techniques should be at the forefront of such policies with substantial consideration being given to “whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to: medical conditions; mental impairment; developmental disability; physical limitation; language barrier; drug interaction; [or] behavioral crisis.” According to a 2009 study by the Council of State Governments Justice Center, in conjunction with the Office of Justice Programs’ (OJP) National Institute of Justice (NIJ), almost 17% of adults sampled in local jails across the country had a serious mental illness—this number is “three to six times the rate of the general population.”⁴⁹ This issue is of immediate importance going forward due, partially, to the suggestion that up to 25% of fatal police shootings in 2015 may have involved individuals with impaired mental functioning.⁵⁰ This, paired with implicit biases, leaves black individuals, especially those with mental or other illnesses, at substantial risk for police involvement.

Over the past several years, a tension has been increasingly exposed between police and communities of color throughout the U.S. The reality shows that policing in communities of color, at the national, state, and local levels are at an important juncture; the outcome could be policing reform and improved collaboration with communities of color, or continued/increased, tension and conflict between police and these communities. Political leadership must likewise be held accountable for improving these conditions; not only do they hire police executives, but they set the tone for how their citizens are treated. Regardless of race, ethnicity, socioeconomic status, or the like, residents are entitled to law enforcement and justice systems that protects and serves them. The goal of a better partnership between police and community members is to develop a collective sense of responsibility for community wellbeing, which will improve crime prevention and promote safety for both police and the communities they serve.

⁴⁸ State of Delaware, Statistical Analysis Center, Delaware Criminal Justice Council, and State Bureau of Identification, *Report on Crime in Delaware (2013 – 2017)*, 2018.

⁴⁹ See, e.g., Department of Justice, “Addressing Mental Illness in the Criminal Justice System,” justice.gov. <https://www.justice.gov/archives/opa/blog/addressing-mental-illness-criminal-justice-system>.

⁵⁰ Emma Frankman, “Mental Illness Affects Police Fatal Shootings,” *Contexts: Sociology for the Public* 17, 2 (May 2018) 70-72.

III. SUMMARY OF BRIEFING THEMES-TOPICS

This section summarizes the main themes and topics that were addressed by various invited panelists during their presentations and responses to Committee Members' questions, statements made by speakers in Public Comments portion of the agenda, and additional written statements submitted for the record.⁵¹ The invited panelists were experts in diverse fields, including psychology and brain science, political science, policing, judicial and government administration, community advocacy, civil rights, and more. The experts were grouped on the following five panels:

Panel 1: Implicit Bias – What it is and Why it Matters:

- Patrick S. Forscher, PhD, Assistant Professor, Psychological Science, University of Arkansas;
- James M. Jones, PhD, Trustees Distinguished Professor, Psychological and Brain Sciences, University of Delaware;
- David C. Wilson, PhD, Professor and Associate Dean, Political Science, University of Delaware; and
- Nobel Wray, Former Chief of the Madison Police Department, Wisconsin, and Anti-Bias Policing Trainer.

Panel 2: Policing in Communities of Color – an Overview:

- Rod Brunson, PhD, Dean & Professor, Criminology, Rutgers University;
- James Nolan, PhD, Professor, Sociology, West Virginia University; and
- Ivan Sun, PhD, Professor, Sociology & Criminology, University of Delaware.

Panel 3: Community Advocates on Policing Communities of Color:

- Kathleen McRae, MSW, Executive Director, ACLU of Delaware;
- Corie Priest, In-Reach Coordinator, Wilmington HOPE Commission Achievement Center;
- Rev. Dr. Lawrence Livingston, Vice President, Interdenominational Ministers Actions Council (IMAC) of Delaware;
- Darryl Chambers, PhD Candidate, Criminology & Research Associate, Center for Drug & Health Studies, University of Delaware.

Panel 4: Law Enforcement Officers on Policing Communities of Color:

- Lieutenant Fred Calhoun, President, Delaware Fraternal Order of Police;
- Captain Faheem Akil, Wilmington Police Department, Delaware, & Member, Delaware National Organization of Black Law Enforcement Executives (NOBLE); and
- Corporal Joel Diaz, Georgetown Police Department, Delaware.

Panel 5: Delaware Officials: What's Been Done and What's Still to Be Done:

- Colonel Nathaniel McQueen, Jr., Superintendent, Delaware State Police;
- Chief Vaughn Bond, New Castle County Police, Delaware;

⁵¹ See *Appendix A*: Summary of November 1, 2017, Hearing Testimony and Discussion (Panels 1–5 and Open Public Forum).

- Chief Marvin Mailey, Dover Police, Delaware;
- Chief Robert Tracy, Wilmington Police, Delaware;
- Brendan O’Neill, Chief Defender, Office of Defense Services, Delaware;
- Kathleen Jennings, Chief Administrative Officer & Public Safety Director, New Castle County, Delaware; and
- Christian Kervick, MA, Executive Director, Delaware Criminal Justice Council.

A. Implicit Bias

1. Social and Psychological Development of Implicit Biases

James Jones, PhD, testified that humans have two thinking processes: “System 1,” which are automatic and operate below conscious awareness, and “System 2,” which tend to be more rational, deliberative, effortful, and slow.⁵² System 1 processes include *subtle implicit influences*—or internalized biases—that have a profound effect on humans’ System 2 processes, or conscious beliefs, values, judgements, and behaviors. Implicit biases are a natural part of human behavior; it is impossible to not have these biases, therefore, everyone is subject to their implicit influences.⁵³ Implicit biases can be understood as *automatically-activated associations about social proofs*.⁵⁴ These biases are acquired early in life through the exposure to culturally-common stereotype information; stereotypes come to mind automatically—without any conscious intention on the part of the individual—because they become extremely well-rehearsed in human minds over time. As explained, humans lack functional awareness of these biases, thus cannot acutely control or influence their personal subconscious thoughts and assumptions. Because of the automatic nature of these biases, they have the potential to greatly impact behavior—especially in situations where individuals lack motivation, awareness, or the ability to think before they act.⁵⁵

2. Measuring Implicit Bias

Studies researching implicit bias generally come in two varieties: those that use an existing measurement tool to assess and evaluate implicit biases’ effects on subjects’ behaviors or those in which researchers try to change implicit bias. These studies continually find that the existence of implicit biases related to certain kinds of behavior, e.g., distance white people choose to sit to brown and black people).⁵⁶ Implicit Association Tests (IAT) are arguably the most common measurement tool used to study implicit biases. IAT calculate automatic association response times between representations of race, gender, age, and other classifications and positive and negative

⁵² James Jones, Ph.D., testimony, *Briefing Before the Delaware Advisory Committee to the U.S. Commission on Civil Rights, Wilmington, DE*, Nov. 1, 2017, transcript, pp. 26-27 (hereafter cited as *Wilmington Briefing*).

⁵³ David C. Wilson, Ph.D., Additional Written Statement for the *Wilmington Briefing*, See Appendix D: Wilson Additional Statement, (2017). (hereinafter *Wilson Additional Statement*).

⁵⁴ Patrick S. Forscher, Ph.D., Testimony, *Wilmington Briefing*, p. 11.

⁵⁵ *Ibid.*, 10-11.

⁵⁶ *Ibid.*, 12-14.

characteristics.⁵⁷ These tests force participants to associate positive and negative evaluations or stereotypes, e.g., *good, bad, clumsy, athletic*, with concepts, e.g., *black man, white women* by asking participants to quickly sort words into categories.⁵⁸ The test developers determined that the time differential could be quantified to provide an objective assessment of a test taker's subconscious attitudes. The premise of the test is that people are able to make a faster cognitive connection, or association, when they feel that the concepts and evaluations make sense; associations that do not make immediate logical sense take longer for a participant to think about – the speeds at which people associate the terms *beautiful* and *princess* or the terms *dangerous* and *sharks* – would have a shorter response time than would *dangerous* and *princess* or *beautiful* and *shark*) because they are in agreement psychologically.⁵⁹

There is some concern as to the statistical reliability of the IAT as a measure. According to David Wilson, PhD: “Reliability is a measure of the tests ability to measure the same thing over and over again.”⁶⁰ Because all IAT experiments are based on the same premise—to associate *traits* with *objects*—those who take an implicit association test more than once may produce “unreliable” results.⁶¹ Humans tend to act in *socially desirable ways* (including producing the results that they expect a researcher may be looking for), which can ultimately decrease reliability scores.⁶² While the IAT should not be used as a direct predictor linking a person's behavior to their personally held biases, these reliability concerns “diminish substantially as sample size increases.”⁶³ Therefore, IAT “are not problematic in diagnosing system-level discrimination,” such as predicting “personnel decisions,” (hiring, salary, promotion); “law enforcement decisions (stops and searches of drivers, pedestrians, or travelers); criminal justice decisions (jury and bench verdicts, sentencing, bail setting, parole, inmate discipline); educational decisions” (admissions, grading, discipline), and “health-care decisions (triage, treatment authorization, prescription).”⁶⁴ Another dispute revolves around the way the studied phenomenon are referenced; some researchers refer to it as *bias* and some as *prejudice*; either way, the collective results of the test clearly show that bias exists, and that existence has – in some way – the potential to impact decision-making and judgement.⁶⁵ Despite some speculation that the IAT may not be an appropriate measure, scholars

⁵⁷ See Anthony G. Greenwald and Mahzarin R. Banaji, “Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes.” *Psychological Review* 102(1995): 4-27.

⁵⁸ Project Implicit. “About the IAT.” <https://implicit.harvard.edu/implicit/iatdetails.html>.

⁵⁹ *Wilson Additional Statement.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ Anthony G. Greenwald, Mahzarin R. Banaji, and Brian A. Nosek, “Statistically Small Effects of the Implicit Association Test Can Have Societally Large Effects.” *Journal of Personality and Social Psychology* 108(201): 553-561.

⁶⁴ *Ibid.*

⁶⁵ *Wilson Additional Statement. OR Appendix D.*

have found that these tests are indeed highly effective measurement tools toward predicting “system-level” outcomes.⁶⁶

Decades of similar research have led psychologists to a consensus that people generally associate racial minorities (African-Americans in particular) with more negative traits because the test takers’ attitudes about race were influenced by subconscious bias.⁶⁷ Using the IAT, researchers have been able to examine racial associations, documenting a marked preference for representations of white faces among test takers of different races who consciously believed that their views about race were neutral. In one well-known study,⁶⁸ researchers investigated implicit biases in relation to real-world criminal justice system examples where they asked participants to rate photographs of black men who were convicted of killing white victims on the degree to which they appeared “stereotypically black” (i.e. based on features like hair texture or skin tone). In comparing these perceptions to the actual sentence, the defendants received, the researchers found that “defendants who were perceived as more stereotypically black were significantly more likely to have received a death sentence than defendants whose appearance was perceived as less stereotypically black.”⁶⁹ By measuring test takers’ preferences based on their response times in pairing positive or negative words with depictions of different, alternating faces, researchers have determined that quicker response times for pairing black faces with negative words and white faces with positive words indicate an implicit preference for a black or a white face with a negative or a positive word.⁷⁰

3. Understanding Implicit Bias in Policing

All humans have implicit biases, so even the best police officers and the best police agencies have implicitly-held biases because they *hire from the human race*.⁷¹ Biased policing occurs when law enforcement inappropriately considers race, ethnicity, and other factors when deciding with whom or how to intervene.⁷² Although all people hold implicit biases, they may or may not be aware of, police officers may be particularly susceptible of acting on them due to the nature of their work environment. Police officers receive survival training because, since they are sometimes confronted with life-or-death situations, they must make split-second decisions to determine if an

⁶⁶ Anthony G. Greenwald, Andrew Poelman, and Mahzarin R. Banaji, “Understanding and Using the Implicit Association Test: III. Meta-Analysis of Predictive Validity.” *Journal of Personality and Social Psychology* 97, no. 1 (2009). 17-41.

⁶⁷ Audrey J. Lee, *Unconscious Bias Theory in Employment Discrimination Litigation*, 40 Harv. CR.-C.L.L. Rev. 481, 484-85 (2005).

⁶⁸ Eberhardt, Davies, Purdie-Vaughns, and Johnson, “Looking Deathworthy” 383-386.

⁶⁹ Vanessa Meterko. “Your Brain, Race, and Criminal Justice.” *Innocence Project* (May 22, 2015). <https://www.innocenceproject.org/your-brain-race-and-criminal-justice-2/>.

⁷⁰ Christine Jolls and Cass R. Sunstein, *The Law of Implicit Bias*, 94 Calif. L. Rev. 969, 971 (2006) (stating that implicit bias should be controlled through a strategy of “debiasing” the law).

⁷¹ Nobel Wray Testimony, *Wilmington Briefing*, p. 36.

⁷² *Ibid.*, 39.

individual is going to harm them. Officers are conditioned so that their first response to conflict is to take charge and to *respond appropriately* only once the situation is under control. Lieutenant Fred Calhoun testified: “(Officers) are trained to survive. We are not originally trained to—I don’t want to use the word ‘talk’ to people—but we are not originally (trained to consider if) I am going to hurt [the person’s] feelings,” or make the person feel better.⁷³ Nonetheless, racially biased policing approaches are unjust, unsafe, and ineffective,⁷⁴ therefore, it is imperative for police officers to understand that they are subject to the same kinds of flawed perceptions and behaviors as everyone else.⁷⁵

The perception of racial bias throughout the justice system does not exist in a vacuum. As the data show, it is undeniable that bias at various points of contact within the system are longstanding: “No criminal justice professional in this state can stand before you today and say that there is not a disproportionate number of minorities filtering in and out of the criminal justice system,” stated Christian Kervick of the Delaware Criminal Justice Council (CJC).⁷⁶ In 2010, black males were between three and four times more likely than white males to be incarcerated for weapons and drug offenses, respectively, in Delaware.⁷⁷ The Delaware CJC provided data showing that delinquency referrals—or complaints that initiate court processing for juveniles⁷⁸—in 2014 was more than triple (at a rate of 75.1) for black juveniles, than it was for whites (at a rate of 24.1).⁷⁹ The Delaware CJC stated that these disparities could exist for a number of reasons, such as the prevalence of different behaviors by white juveniles and black juveniles or differential responses by law enforcement and/or juvenile court decision-makers. Regardless, it is evident that disparities exist and that additional exploration is crucial to determine why more minority individuals are arrested, detained, and incarcerated in Delaware.

Brendan O’Neill explained that as a former Los Angeles prosecutor and federal prosecutor and, since coming to Delaware, he has not experienced any situation in which there was an affirmative decision made to be harsher towards someone because that person was a person of color. He went on to say that there are value judgements and, as an example, offered the below hypothetical to illustrate different outcomes negotiated by defense counsel for a black and white client. He then asked if implicit bias caused the different outcomes. He continued by saying he was sure it does happen, but he couldn’t identify a specific case. He concluded saying that during his career as a prosecutor and public defender, he had not seen any instances of overt discrimination.

⁷³ Fred Calhoun Testimony, *Wilmington Briefing*, p. 199.

⁷⁴ Wray Testimony, *Wilmington Briefing*, p. 39.

⁷⁵ Jones Testimony, *Wilmington Briefing*, p. 42.

⁷⁶ Christian Kervick Testimony, *Wilmington Briefing*, p. 301.

⁷⁷ See, e.g., State of Delaware, Statistical Analysis Center and Delaware Criminal Justice Council, *Recidivism in Delaware: An Analysis of Prisoners Release in 2008 through 2010*, (2014).

⁷⁸ See U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention: “Glossary of Terms,” <https://www.ojjdp.gov/pubs/jcs96/glos.html>.

⁷⁹ See *Appendix B.1*: Delaware Criminal Justice Council, *Explanation of Relative Rate Index (RRI) for Disproportionate Minority Contacts (DMC) Annual Reports*, (2017).

A client comes to [the Office of Defense Services] and he is an 18-year-old kid from the City of Wilmington; he has a couple of misdemeanors as a juvenile and he has a case that might be defensible. So, the [Attorney General] is amenable to making a deal, and [the defense] lawyer might say [to the client]: “You know what, I can get you a misdemeanor. It's going to be Level 1 or Level 2 probation and you will be out of [jail]—you don't have any felony,” and [the defense attorney can guarantee those outcomes] . . . If it's a person of color, that might sound like that's an attractive deal. [but], that same lawyer might have a kid from—a white kid—from the University of Delaware, and that lawyer might go to the prosecutor and say: “Hey, don't screw this kid, he is in college. This kid made a mistake,” and, “this is a kid who deserves a second chance.”⁸⁰

This example provides context for understanding the insidious nature of implicit biases. While the defense attorney in Chief Defender O'Neill's example ultimately did nothing wrong, the *forcefulness of advocacy and the willingness to creatively intervene* by police, prosecutors, and other judicial officials can likewise produce disparate outcomes.⁸¹

When and if police are unwilling or unable to distinguish between law-abiding citizens – who are entitled to being protected and served by police – and citizens who threaten society, there is a major possibility that the civil rights of these persons of color may be violated. James Jones, Ph.D., testified that this research indicates: “Not only are black [people] thought of as criminals, but also crime is thought of as black, and that association is very strong.”⁸² Racial biases in policing are detrimental not only for suspects and perpetrators, but also victims of crime because when a monolithic perception of communities of color is employed, it can lead to the criminalization of entire racial groups.⁸³ As stated, research approaches have shown that people are generally *more attuned to criminally-related images* when they are conscious of that image *in relation to black*.⁸⁴ Presumably, this association exists because of the pervasive stereotype that blackness denotes criminality. There is a commonly-held and fundamentally untrue perception by law enforcement and others that black, brown, and poor communities are adversely opposed to law enforcement presences and interventions; in reality, these communities largely demand *more, not less, attention* from law enforcement and generally these community members want to show support law enforcement.⁸⁵

⁸⁰ Brendan O'Neill Testimony, *Wilmington Briefing*, pp. 339-40.

⁸¹ *Ibid.*, 340.

⁸² Jones Testimony, *Wilmington Briefing*, p. 31.

⁸³ Rev. Lawrence Livingston Testimony, *Wilmington Briefing*, p. 159.

⁸⁴ Eberhardt, Davies, Purdie-Vaughns, and Johnson, “Looking Deathworthy,” 383-386.

⁸⁵ Livingston Testimony, *Wilmington Briefing*, p. 143.

B. Police and Communities of Color

1. Aggressive and Harassing Policing Tactics

Not all communities are policed in the same manner; many disadvantaged neighborhoods experience policing tactics and strategies that are different in *more tranquil, affluent suburban communities*.⁸⁶ According to the *Final Report to the Wilmington Public Safety Strategies Commission*,⁸⁷ tactics of the Wilmington Police Department are perceived by the community as “aggressive, racially motivated, insensitive to the needs of the African American community” and “disconnected from the community that they serve.” The Public Safety Strategies Commission’s report states that survey respondents:

Described groups of juveniles who were walking and bothering no one, and officers will stop them, handcuff them, and then search them. If they don’t find anything, they release them. Residents have classified it as “Walking While Black” and when they inquire about what is happening, they report that officers allegedly swear at them or threaten to arrest them.⁸⁸

Similarly, extensive research conducted by Ivan Sun, Ph.D., on police attitudes, behavior, and the public perception of law enforcement in Wilmington has shown that residents have a long history of experiencing aggressive policing tactics from the Wilmington Police Department.⁸⁹ These approaches often involve frequent and suspicious pedestrian and vehicle stops by district patrol officers, detectives, and members of specialized units and task forces in minority neighborhoods.⁹⁰ The *crime control strategies* residents are frequently exposed to are tactics that are commonly associated with the *war on drugs* and the aggressive enforcement of other relatively low-level types of offenses.⁹¹ Obviously, these increased police initiatives escalate the chance that individuals in these communities will have both direct and indirect interactions with police.

While law enforcement agencies tend to consider such strategies *proactive*, community members often view them as overly aggressive—sometimes to the extent of constituting violence or harassment.⁹² “The culture of the police in Wilmington, or most [police] forces, is that they don’t want their officers to care for the community, and when they do, they call it hug-a-thug,” Corie

⁸⁶ Rod Brunson, Ph.D., Testimony, *Wilmington Briefing*, p. 92.

⁸⁷ *Final Report to the Wilmington Public Safety Strategies Commission*.

⁸⁸ *Ibid.*

⁸⁹ Ivan Sun, Ph.D., Testimony, *Wilmington Briefing*, pp. 101-06.

⁹⁰ *Ibid.*, 104.

⁹¹ Brunson Testimony, *Wilmington Briefing*, pp. 91-92.

⁹² *Ibid.*, 94.

Priest testified.⁹³ As a former police officer, former Wilmington Mayor, Dennis Williams (elected in 2012 and serving until 2017), “made a name for himself as ‘*tough on crime*’ guy, who, throughout his campaign, pledged to “roll back the community-based [policing] approach, suggesting it was wrong-headed to “*hug-a-thug*,” according to *Delaware Online*.⁹⁴ This kind of mindset, Priest explains, is counterproductive to relationship building because it “prevents officers who really want to show care and concern for us in the community to fall back a little bit because they don’t want to seem soft, in the ranks.”⁹⁵ One explanation by police, as to why they may respond disproportionately, is that the high rate of crime in disadvantaged communities makes them more dangerous, but this explanation runs counter to evidence collected in predominately-white disadvantaged neighborhoods. Data reflect that white youth typically only report being stopped or mistreated when they are in black neighborhoods, with black people, or dressed in “hip hop clothing.”⁹⁶

The Delaware branch of the American Civil Liberties Union (ACLU) reports approximately 800 complaints annually alleging civil rights violations; according to Kathleen McRae, Executive Director of the ACLU of Delaware, the complainant was a person of color in all cases but one.⁹⁷ The Delaware ACLU has filed lawsuits against police departments in the state for alleged civil rights violations that include instances of false arrests, excessive force, unconstitutional detention without probable cause, among other things.⁹⁸ A federal judge recently approved a settlement in a class action lawsuit, filed in 2013, on behalf of people who were allegedly wrongfully arrested by the Wilmington Police Department (WPD).⁹⁹ The case alleged a “police practice of transporting people to the police station and detaining them there without sufficient evidence that they committed a crime.”¹⁰⁰ The case was settled in 2019. The City denied the claims and admitted no wrongdoing. In addition, the City agreed to revise policies and to conduct new trainings about investigatory stops and arrests. It also agreed that going forward it would require “written documentation of the facts justifying every arrest.”¹⁰¹

⁹³ Corie Priest Testimony, *Wilmington Briefing*, p. 166.

⁹⁴ Brittany Horn, Jessica Masulli Reyes, Esteban Parra, Christina Hedra, and Larry Fenn, “Wilmington: Most Dangerous Place in America for Youth.” *The News Journal and Associated Press*, September 8, 2017, <https://www.delawareonline.com/story/news/crime/2017/09/08/our-babies-killing-each-other/100135370/>.

⁹⁵ Priest Testimony, *Wilmington Briefing*, p. 166.

⁹⁶ Brunson Testimony, *Wilmington Briefing*, p. 117.

⁹⁷ Kathleen McRae Testimony, *Wilmington Briefing*, pp. 132-33.

⁹⁸ *Ibid.*

⁹⁹ *See, e.g.*, American Civil Liberties Union, “Wright v. City of Wilmington.” [aclu.org. https://www.aclu-de.org/en/cases/wright-v-city-wilmington](https://www.aclu-de.org/en/cases/wright-v-city-wilmington).

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

2. Procedural Justice

Generally, urban residents report frequently witnessing or directly experiencing encounters with police that go beyond harassment, including—most commonly—physical abuse and violence, theft, and being abandoned in potentially dangerous neighborhoods.¹⁰² Although many of these incidents do not result in arrest, they leave a lasting negative impression of police on many people because, among other reasons, individuals' personal experiences tend to mirror their peers' experiences with police. Ivan Sun, PhD, testified that the *Final Report of the President's Task Force on 21st Century Policing*¹⁰³ explains that “people are more likely to obey the law when they believe that those who are enforcing it have the legitimate authority to do so; the public confers to legitimacy only on those they believe are acting in procedurally just ways.”¹⁰⁴

Citizens view procedural justice as something that is expressed by officers through their language, attitudes, and gestures. This concept, known as the *Process-Based Model*, indicates that “procedural justice and motive-based trust both influence decision acceptance and satisfaction with the decision maker.”¹⁰⁵ In other words, the model shows that “the primary factor shaping how people [react] to their experience(s) [with law enforcement] is the quality of their treatment by the authority.” When people are treated with dignity, respect, have their rights acknowledged, and are able to “participate in the situation by explaining their perspective and indicating their views about how problems should be resolved,” the officer's decision tends to be viewed as “neutral, consistent, rule-based, and without bias.”¹⁰⁶ The perception of procedural justice is not necessarily about whether or not a citizen gets stopped, arrested, or ticketed; instead, the process in decision-making is paramount—if the officer was polite, fair, and respectful—not necessarily the outcome.¹⁰⁷ When asked about reactions from officers in the context of citizen noncompliance, Dr. Sun explains that, while “it's important to educate our citizens to react to [police interactions] in the proper way, [it can be] hard to achieve that, particularly in minority neighborhoods when there is a history of abuse and mistreatment by the police.”¹⁰⁸ Correspondingly, Captain Faheem Akil explained that this mutual respect comes over time, stating:

They want to see consistency . . . It's not so much the enforcement part, but it's how you enforce it. And are you going to be ready to demean or demise or ridicule when you are in

¹⁰² Brunson Testimony, *Wilmington Briefing*, p. 95.

¹⁰³ See U.S. Department of Justice, COPS, *Final Report of the President's Task Force on 21st Century Policing*, May 2015, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

¹⁰⁴ Sun Testimony, *Wilmington Briefing*, p. 100.

¹⁰⁵ Tom R. Tyler, “Procedural Justice, Legitimacy, and the Effective Rule of Law,” *Crime and Justice* 283-357 (2003), <http://www.jstor.org/stable/1147701>.

¹⁰⁶ *Ibid.*

¹⁰⁷ Sun Testimony, *Wilmington Briefing*, p. 101.

¹⁰⁸ *Ibid.*, 109.

a position of leadership or power? So, when that doesn't happen, I think you are always going to have individuals who are not going to comply.¹⁰⁹

Issues of police harassment and aggression apparently disseminate beyond the individual personally impacted. Citizens of color across the country report being influenced by both the direct and indirect experiences they have had with police harassment, aggression, and violence. Young black males routinely describe their experiences with aggressive crime control efforts along with their perceptions that race and neighborhood conditions shape their experiences with the police.¹¹⁰ The events in Baltimore, Ferguson, New York, and other communities are rightfully carried by news and other media outlets and have a dramatic negative impact on the perception of justifiability of police.¹¹¹ The narratives that reflect poor relations and a lack of trust between communities of color and police are a huge challenge for law enforcement agencies to address. These negative perceptions contribute to the mentality that the justice system will never treat them fairly; when people feel that the police are not there to protect them, they believe that they will never see justice.¹¹² This is especially important because in forming opinions, people do not only draw from their personal lived experiences, but they consider collective or “accumulated discriminatory experiences” of their families, communities, and racial group(s) as well.¹¹³ Rod Brunson, PhD, testified:

Black elders—we know from not just media accounts, but also research on the topic—often feel the need to forewarn children about impending danger that they might experience at the hands of police. We don't have any corresponding evidence from other racial groups that [a similar] conversation takes place, so it's important to note that black parents and elders feel the need to have this conversation. Not to bias youths against the police, but to prepare them for what they consider to be an inevitable unwelcome police encounter.¹¹⁴

Reports of police unfairly victimizing people of color creates increased levels of distress across all communities—including those where there have not been explicitly known incidents of abuse. For example, both Kathleen McRae and Corie Priest spoke about the killing of Jeremy McDole – who was shot and killed by an officer while sitting in his wheelchair – as real detriments to the rebuilding of trust by police.¹¹⁵ As a white resident of Wilmington reported to Ivan Sun, PhD: “I want to trust the police, but it seems like it’s getting out-of-hand.” Experiences of unfair and unjustified treatment by police –directly and indirectly, i.e., through the news, shared personal

¹⁰⁹ Faheem Akil Testimony, *Wilmington Briefing*, p. 195.

¹¹⁰ Brunson Testimony, *Wilmington Briefing*, p. 94-95.

¹¹¹ Nathaniel McQueen Testimony, *Wilmington Briefing*, p. 249; Kervick Testimony, *Wilmington Briefing*, pp. 302–03.

¹¹² O’Neill Testimony, *Wilmington Briefing*, p. 288.

¹¹³ Brunson Testimony, *Wilmington Briefing*, p. 89.

¹¹⁴ Ibid.

¹¹⁵ Priest Testimony, *Wilmington Briefing*, p. 139; McRae Testimony, *Wilmington Briefing*, pp. 136.

stories –significantly damage the public’s perception of police.¹¹⁶ For example, one of Dr. Sun’s respondents recalled stories of police harassment and assault, such as mimicking the unholstering of their guns, and said: “People are not going talk to [police] if they [do not trust them because they] feel as though their lives are in danger.”¹¹⁷

When police interact with the public while they are investigating crimes, they are talking to people at the worst moments in their lives, so, the public trust is not always there. It is difficult for officers to enter a chaotic situation with a relaxed approach because police officers are trained to take control of a situation and to diffuse the turmoil; if an officer enters with an inappropriately relaxed approach, the chaotic situation can escalate and can be extremely dangerous for everyone.¹¹⁸ Traffic stops are particularly dangerous contacts for police officers because of the potential for vehicle collisions.¹¹⁹ According to Captain Akil, Delaware law states that regardless of the invalidity of the arrest, a citizen does not have the right to resist, so a traffic stop or a situation on the street is not the appropriate time to debate the legitimacy of the stop.¹²⁰ These residents express particular frustration, though, with police when they are stopped in situations where they believe there was no legitimate basis for suspicion.¹²¹ Corie Priest testified that there is a “lack of real accountability within the [Wilmington] police department” in terms of “racism, stereotypes, profiling based on color, and profiling of individuals of color.”¹²² The key to improving police-community relations is accountability and respect in both directions. If the community does not believe in, respect, or feel respected by the police, then they are unlikely to accept police authority.¹²³

3. Proximity and Cultural Awareness

A significant contributor to these issues is a fundamental socio-cultural unawareness and misunderstanding of the communities the police are serving. When officers have no significant attachment to these localities because their homes are not within those communities, they are able to separate themselves from the day-to-day issues that contribute to problems. This lack of proximity can act as a barrier to relationship building because, in Delaware and throughout the country, officers do not often live in or have firsthand knowledge of the communities they

¹¹⁶ Sun Testimony, *Wilmington Briefing*, p. 102.

¹¹⁷ *Ibid.*, 103.

¹¹⁸ Joel Diaz Testimony, *Wilmington Briefing*, pp. 212-13.

¹¹⁹ *Ibid.*, 227.

¹²⁰ Akil Testimony, *Wilmington Briefing*, p. 231.

¹²¹ Brunson Testimony, *Wilmington Briefing*, pp. 94-95.

¹²² Priest Testimony, *Wilmington Briefing*, p. 139.

¹²³ Jones Testimony, *Wilmington Briefing*, p. 71-72.

police.¹²⁴ Proximity to the community is important because officers lack a fundamental understanding of the environment.¹²⁵ There are severe institutional, economic, and other barriers in these areas that can contribute to the existence of crime. For instance, 85% of the people charged with crimes in the state are represented by the Delaware Office of Defender Services, including the Public Defender’s Office and the Office of Conflict Counsel, because they are considered indigent and therefore cannot hire their own lawyers to represent them in court.¹²⁶ Additionally, aspects such as a lack of access to adequate schools, insufficient employment opportunities, inadequate housing, and laws that are disproportionately harmful for certain groups of people (e.g. regressive income taxes; parking tickets that carry high interest; or hefty court fines for relatively low-level offenses), at the local, state, and national levels, and more, influence who is at risk of becoming involved with the justice system. Compounded by implicit biases, the lack of social, cultural, and physical proximity to these communities often leads officers to assume that the cause of the problems are the *bad guys*—the *criminals*—instead of understanding that all people are just making decisions within a context.¹²⁷ While many of these issues are beyond the control of officers and agencies themselves,¹²⁸ having an understanding of these influencing factors could significantly improve community-police relations.

4. Militarization of Law Enforcement

The provision of military weapons, vehicles, and tactical training equipment to local and state police agencies since the *National Defense Authorization Act of 1989* has proven extremely problematic for communities of color.¹²⁹ The Defense Logistics Agency’s (DLA) Law Enforcement Support Office (LESO) reports that “more than \$6.8-billion worth of property” has been transferred to law enforcement agencies since the program began, and in 2017, \$504-million worth of property (based on initial acquisition cost) was transferred to law enforcement agencies.”¹³⁰ The process that was supposedly initiated to assist law enforcement during the “war on drugs” has led to a “warrior mentality” within many police agencies.¹³¹ When militarized approaches, tactics, and tools that are designed and developed to fight foreign powers and the

¹²⁴ Priest Testimony, *Wilmington Briefing*, p. 140.

¹²⁵ Ibid.

¹²⁶ O’Neill Testimony, *Wilmington Briefing*, p. 286.

¹²⁷ James Nolan, Ph.D., Testimony, *Wilmington Briefing*, p. 80.

¹²⁸ Kathleen Jennings Testimony, *Wilmington Briefing*, p. 326.

¹²⁹ McRae Testimony, *Wilmington Briefing*, p. 135.

¹³⁰ See Defense Logistics Agency, “LESO Property Transferred to Participating Agencies,” DLA.com, <https://www.dla.mil/DispositionServices/Offers/Reutilization/LawEnforcement/PublicInformation/> (last accessed March 31, 2019. (hereinafter “LESO Property Transferred to Participating Agencies”).

¹³¹ Seth Stoughton, *Law Enforcement’s “Warrior” Problem*, 128 Harv. L. Rev. F. 225, 226-27 (2015); Sue Rahr and Stephen K. Rice. “From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals.” *New Perspectives in Policing Bulletin* (2015).

worst, most violent criminals¹³² are used on civilian communities at-large, it signifies community occupation rather than community policing.¹³³ Not only are militarized police approaches overwhelmingly targeting people and communities of color,¹³⁴ but sometimes the overly extreme police presence for arrests (i.e. SWAT teams, helicopters) are the only police interactions that children in communities of color ever have. According to the DLA's list of "accountable property held by participating agencies," updated in March of 2019, over twenty-five law enforcement agencies in Delaware currently hold property transferred through the LESO program.¹³⁵ As stated by Reverend Lawrence Livingston, PhD: "As long as we look at our citizenry as a group of people that we need to fight with those tools, we are going to have a problem."¹³⁶ This us-versus-them attitude has effectively positioned the community as *the enemy to be vanquished, not the community to be protected and served*.¹³⁷

C. Solutions to Protect and Serve Communities of Color

1. Mitigating Implicit Bias in Policing

Subconscious biases can certainly lead to mistreatment, including through the denial of civil rights, political rights, group helping behaviors, or support for ameliorative policies.¹³⁸ Although it is not possible to completely eliminate internalized biases¹³⁹ as they are deeply engrained in individuals' psyches, there must be some sort of intervention to prevent implicit biases from becoming explicit in police work. For officers, emphasizing the safety implications of bias can be very productive in mitigating its effects. As explained by Nobel Wray, overreacting as well as underreacting to situations because of implicit biases can create really dangerous safety hazards.¹⁴⁰ Because implicit biases are like unwanted habits that can only be broken with motivation, awareness, and effort,¹⁴¹ the process toward doing so requires that officers first become aware of the bias; understand when, where, and why it occurs; and then become equipped with supportive tools that work to help avoid

¹³² Kamala Harris, *Smart on Crime* (San Francisco, CA: Chronicle Books, 2009).

¹³³ Livingston Testimony, *Wilmington Briefing*, pp. 142-43.

¹³⁴ McRae Testimony, *Wilmington Briefing*, p. 135.

¹³⁵ See "LESO Property Transferred to Participating Agencies."

¹³⁶ Livingston Testimony, *Wilmington Briefing*, p. 170.

¹³⁷ McRae Testimony, *Wilmington Briefing*, p. 135.

¹³⁸ Wilson Testimony, *Wilmington Briefing*, p. 20.

¹³⁹ *Ibid.*, p. 65.

¹⁴⁰ Wray Testimony, *Wilmington Briefing*, p. 66.

¹⁴¹ Forscher Testimony, *Wilmington Briefing*, p. 60.

acting on it.¹⁴² Once individuals are aware that they may be acting counter to their intentions¹⁴³—that internalized assumptions could be negatively impacting their behavior in the field — they can practice severing the connection between the beliefs and the behavior.

Any law enforcement implicit bias exercises must be all-encompassing, including not only the individual intervention or training, but also the agency policies, procedures, culture, values, and other aspects that impact the issue.¹⁴⁴ This is true for a number of reasons. Firstly, training programs are only as good as the individual’s willingness to challenge his or herself to learn and grow.¹⁴⁵ Additionally, regardless of the training given in a setting, officers “get a different set of trainings” when they leave that setting, David Wilson, PhD, testified:

You go home, you go to your community, you go to your neighbors, you go to your friends, you go to your families who have all been there throughout your life, so everything you've learned early on is there. You go to the training for one day, two days, or a week, and then you go right back to the environment to which you learned the things that you held before.¹⁴⁶

Psychological interventions — like training — are only useful for solving specific social problems (like biased policing) when and if two necessary factors are met: first, that the psychological ‘changes’ made by the intervention appropriately produce the desired behavior, which in turn influences the social problem and secondly, that such changes persist over time.¹⁴⁷ Implicit bias trainings are essentially ineffective when positioned as a condition of employment because they tend to only produce short-term effects, which is why eradicating biased policing necessarily requires an adaptive and reflexive long-term practice approach.¹⁴⁸

Exposing officers to the environments, cultures, and practices of the community can give them important insight.¹⁴⁹ Similarly, training activities that focus discomfort—role reversal, for example—can *engage law enforcement in settings where their personal rights and freedoms are violated*; discomfort that comes from those situations may be able to subsequently *serve as an emotional cue* and help to reverse some of those deeply held implicit biases.¹⁵⁰ Corporal Joel Diaz

¹⁴² Wilson Testimony, *Wilmington Briefing*, p. 24.

¹⁴³ Jones Testimony, *Wilmington Briefing*, pp. 67-68.

¹⁴⁴ Wray Testimony, *Wilmington Briefing*, pp. 37-38.

¹⁴⁵ Akil Testimony, *Wilmington Briefing*, p. 193.

¹⁴⁶ Wilson Testimony, *Wilmington Briefing*, pp. 66-67.

¹⁴⁷ Forscher Testimony, *Wilmington Briefing*, p. 12.

¹⁴⁸ Wilson Testimony, *Wilmington Briefing*, p. 23.

¹⁴⁹ Diaz Testimony, *Wilmington Briefing*, pp. 195-96.

¹⁵⁰ Wilson Testimony, *Wilmington Briefing*, p. 24.

testified that the training programs he has found most effective in mitigating the influences of implicit bias for police are those that are comprehensive, engage the community, and incorporate the aspects of police culture by focusing on issues of accountability, respect, and safety.¹⁵¹ Fostering a culture of accountability includes committing to disciplinary actions for unacceptable situations. When an agency fails to discipline officers who have committed wrongdoings, a culture is established that deems it acceptable to disregard directives and policies.¹⁵² Implementing rewards and punishments can increase the longevity of training affects; reinforcing that there are consequences for biased actions (such as by having talks with police unions about the criteria for promotions) can begin to motivate a change.¹⁵³ Initiatives such as body cameras have been able to improve accountability; civilian complaints should be carefully considered, as well, because stereotyping behaviors are warning signs for deeper and potential more dangerous problems.¹⁵⁴ Investing in long-term practice approaches is essential for law enforcement to develop the necessary actions and skills that help people avoid acting on implicit biases.¹⁵⁵

2. Building Trust and Bridging the Gap

The primary job of police is to protect citizens in a way that does not violate community members' constitutionally protected rights; community residents want officers to do this job in a way that does not stereotype them by race, economic status, or the like.¹⁵⁶ If law enforcement is to regain the confidence of the most impaired communities, the criminal justice system as a whole must improve.¹⁵⁷ Unfortunately, the existence of legitimate, procedurally justified, "good" police work is not, on its own, going to improve relations with and increase respect from the community because the fundamental lack of trust between the groups is a significant foundational problem that must be addressed. Christian Kervick, said, "(t)he criminal justice system is a complex, imperfect, overtaxed, and under-funded set of solutions to some of the most difficult real-life problems that people will face." He stated that reforms to improve policing, public safety, and the system as a whole must be multi-faceted—"look[ing] through many separate lenses"—including at the inadequacy of schools, housing, insufficiency of employment opportunity, inequality of opportunity, and more.¹⁵⁸ Rod Brunson, Ph.D., reflected this point, testifying: "None of these

¹⁵¹ Diaz Testimony, *Wilmington Briefing*, p. 187.

¹⁵² Vaughn Bond, *Wilmington Briefing*, pp. 331-32.

¹⁵³ Wilson Testimony, *Wilmington Briefing*, p. 65.

¹⁵⁴ Akil Testimony, *Wilmington Briefing*, pp. 229-32.

¹⁵⁵ Jones Testimony, *Wilmington Briefing*, p. 58.

¹⁵⁶ O'Neill Testimony, *Wilmington Briefing*, pp. 288-89.

¹⁵⁷ Kervick Testimony, *Wilmington Briefing*, pp. 303-04.

¹⁵⁸ James Nolan, Ph.D., Testimony, *Wilmington Briefing*, pp. 84-85.

mechanisms, these things that we impose, these strategies, these reforms, are going to work unless the public trusts the police.”¹⁵⁹

Bridging the gap can be done only if the voices of community members are valued in discussions of how to promote safe neighborhoods, so the first and most fundamental step toward repairing community-police relations is for police agencies to proactively engage in trust-building initiatives.¹⁶⁰ Proactive activity does not necessarily mean traffic stops or stopping people on the street; instead, it means getting involved with different programs and incorporating different groups—working with businesses, churches, and other community stakeholders to solve long-term community problems.¹⁶¹ One method to comprehensively improve relations is to build communities where officers and citizens work together to improve all aspects of life by ensuring that rewards and recognition are aimed at fixing problems, not just numerically measuring enforcement-focused outcomes (such as arrests or traffic stops).¹⁶² Community member Shyanne Miller suggested “reconsidering what do we want police to be, and what are they supposed to be doing? And, are we really asking for police to build a community that is safe and livable or are we just asking them to enforce the law?”¹⁶³ Policing interventions fail when community members feel little-to-no connection to the law enforcement officers who patrol their streets and neighborhoods. Collaboration can build trust between the police and the community¹⁶⁴ while also fostering a sense of mutual respect, which, while important, is mainly the responsibility of law enforcement.¹⁶⁵

a. Community Policing

The U.S. Department of Justice defines *community policing* as a philosophy promoting “organizational strategies that support the systematic 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.”¹⁶⁶ Before becoming a professor, Dr. Nolan was a police officer for thirteen years—beginning his career at the Wilmington Police Department, (WPD). He recently returned to the WPD for a year-long sabbatical, which gave him the “opportunity to witness and see what was going on in policing through the eyes of a sociologist.”¹⁶⁷ Professor Nolan explained that in many communities, including Wilmington, *community policing*

¹⁵⁹ Brunson Testimony, *Wilmington Briefing*, p. 128.

¹⁶⁰ Nolan Testimony, *Wilmington Briefing*, pp. 126-27.

¹⁶¹ Darryl Chambers Testimony, *Wilmington Briefing*, pp. 252-53.

¹⁶² Nolan Testimony, *Wilmington Briefing*, pp. 84-85.

¹⁶³ Shyanne Miller, *Public Comment Session*, p. 350.

¹⁶⁴ Diaz Testimony, *Wilmington Briefing*, p. 187.

¹⁶⁵ *Ibid.*, 197-98.

¹⁶⁶ U.S. Department of Justice, Office of Community Oriented Policing Services (COPS), *Community Policing Defined* (2012). (hereinafter DOJ, *Community Policing Defined*).

¹⁶⁷ Nolan Testimony, *Wilmington Briefing*, p. 78.

is envisioned as a separate entity to supplement and improve community relations, so that the “real police” can continue with the status quo. This mindset is extremely counterproductive and ineffective toward community building.¹⁶⁸ Both by nature and by definition, all law enforcement officers are—or should be—*community police officers*; departments and agencies need to adopt community policing as their procedural and operational philosophy. Community policing cannot solely be implemented by certain designated specialists, it has to be an approach taken by the whole department and other agencies.¹⁶⁹ True community policing approaches can help put an end to the “us-vs-them” mentality of some agencies by respectfully and meaningfully engaging all parts of the community.¹⁷⁰ These approaches will ensure that officers are assessed on their accountability to the community; therefore, the focus of policing will return to its original and primary focus of making people and places safe to thrive.¹⁷¹

Community members of high crime areas often perceive law enforcement officials, judges, prosecutors, public defenders, and even corrections and probations officers as untrustworthy, dishonest, racist, and biased in their decisions making.¹⁷² During the hearing, several presenters stated that Wilmington residents tend to distrust police; residents reported witnessing or experiencing violence or other misconduct inflicted by police officers. One major source of the distrust in Wilmington is reported to come from the way police officers interact with formerly incarcerated or justice system involved individuals in the city. Corie Priest provided an example of a man on probation, whose house was searched – due to the terms of his release – and, upon finding ammunition, was pressured by officers to disclose information about crimes of other community members to avoid being arrested and charged.¹⁷³ That said, inner-city residents consistently express a desire to get to know patrolmen and women better and uniformly praise officers that take a genuine community policing approach.¹⁷⁴ Community members generally wish to help law enforcement, but their experiences being dehumanized, humiliated, and fundamentally unprotected can lead them to focus more on self-preservation than on assisting police.¹⁷⁵ Therefore, the challenge facing police is to figure out a method to surpass the communities’ and officers’ negative perceptions. Developing meaningful partnerships and recognizing that communities do

¹⁶⁸ Ibid., 113-14.

¹⁶⁹ Robert Tracy Testimony, *Wilmington Briefing*, p. 227.

¹⁷⁰ Ibid.

¹⁷¹ Nolan Testimony, *Wilmington Briefing*, p. 114.

¹⁷² Kervick Testimony, *Wilmington Briefing*, pp. 300-01.

¹⁷³ Priest Testimony, *Wilmington Briefing*, p. 139.

¹⁷⁴ Jennings Testimony, *Wilmington Briefing*, pp. 294-95.

¹⁷⁵ Livingston Testimony, *Wilmington Briefing*, p. 144.

not belong to the police, they belong to the people who live in them,¹⁷⁶ can help reorient the system toward a more community-centered approach.¹⁷⁷

b. Employing Social Capital to Advance Communication

It is the obligation of police agencies to find newer, better, and more effective ways of engaging and communicating with communities. Increased community policing can facilitate this engagement because it allows residents and officers to establish a connection that fosters the development of mutual respect and reciprocal expectations.¹⁷⁸ Community member Ashley Scrivner addressed the communication issues that exist between community members and police, stating that for officers to “communicate with people in distress in a way that makes them feel as though [officers] are being compassionate, communicating as a friend, or as someone there to help can be difficult when you work in a profession [like law enforcement] that requires a level of professionalism or a lingo.”¹⁷⁹ Effective communication is essential, because when the community knows what the police are doing and why and how they are doing it, residents are much more willing to come together with police to promote safety.¹⁸⁰ Programs focused on training officers on more effective and engaging ways to communicate could make police more accessible to the community and subsequently improve public safety.

Shyanne Miller commented that community engagement must go beyond just building community trust, it has to likewise include an empowering effort that looks at the police and the community as partners in keeping the community safe: “Policing efforts that establish community members in positions that have power and influence, those are the ways that we can start to actually build trust,” she states, “and making sure that those community people that we do place in positions of power have an actual say in both holding the police accountable and holding community members accountable.”¹⁸¹ One of the more promising trajectories toward improving communication is for law enforcement to engage capable, “street identified” people in various sectors—including community businesses, non-profit organizations, government and social services, education, and religious institutions¹⁸²—to be liaisons between police and the community.¹⁸³ “Street identified” does not necessarily mean gang-affiliated or formerly incarcerated; instead, it means identifying community leaders and giving them access to key leaders in the police department with whom they could dialogue. When community members are able to effectively operate in both arenas, they can

¹⁷⁶ McQueen Testimony, *Wilmington Briefing*, pp. 249-50.

¹⁷⁷ O’Neill Testimony, *Wilmington Briefing*, p. 291.

¹⁷⁸ Calhoun Testimony, *Wilmington Briefing*, p. 204.

¹⁷⁹ Ashley Scrivner, *Public Comment Session*, p. 335.

¹⁸⁰ Tracy Testimony, *Wilmington Briefing*, pp. 308-09.

¹⁸¹ Miller, *Public Comment Session* p. 350.

¹⁸² Livingston Testimony, *Wilmington Briefing*, p. 146.

¹⁸³ Chambers Testimony, *Wilmington Briefing*, p. 150.

assist policing in laying a foundation for trust and relationship building. Because trust is the foundation of relationship-building, “we need to use people who already have that trust, who [can operate or work] in both [the community and with law enforcement], to use them in ways that we can transfer their social capital to that of the police department.”¹⁸⁴ Transferring the social capital of community members to the police department means that the community begins to have access to information within or from the police department, which can begin to develop trust, build positive relationships, reduce crime, promote safety, and fundamentally build-up communities.

3. Cultures of Constant Improvement and Introspection

A community’s confidence in the justice system is affected by the public’s perception of law enforcement,¹⁸⁵ and much of that perception is a direct result of the intraorganizational culture of police. The most effective anti-bias training initiatives are those that are not done in isolation, but instead in conjunction with comprehensive plans to address internal policies, procedures, culture, and values. Training does not and will not work unless there is a *culture within an organization of constant improvement and introspection*.¹⁸⁶ Chief Defender Brendan O’Neill believes that everyone, police included, “need to dig deeper in dealing with individuals who come into contact with law enforcement,” because there are many systemic issues and barriers that influence who is more at risk of becoming involved in the justice system. These aspects (such as poverty and inadequate schooling) should be considered and should orient the system toward a more client-centered approach.¹⁸⁷ This is why it is essential that law enforcement agencies need *forward-thinking leadership* teams¹⁸⁸ that actively work to establish an organizational culture that is introspective, cares about fairness, talks openly about the issues, is constantly working to improve, and is focused on fundamentally shifting what is valued, rewarded, and embraced throughout the agency.¹⁸⁹ The job of police department leaders is to “inspire and motivate others,” Chief Marvin Mailey explains. Leaders should motivate officers to get out of their cars, to get to know the people in the community, to participate in our community outreach initiatives, and to challenge them to make their communities better places to live.¹⁹⁰

Sometimes police officers exist in an *impoverished environment*. They deal with extreme negativity on a daily basis that, over time, may cause attitude changes; they may become “sour,” which could cause internal biases to settle in and sometimes cause their actions to reflect these

¹⁸⁴ Ibid., 153.

¹⁸⁵ O’Neill Testimony, *Wilmington Briefing*, p. 286.

¹⁸⁶ Wray Testimony, *Wilmington Briefing*, pp. 37-38.

¹⁸⁷ O’Neill Testimony, *Wilmington Briefing*, p. 291.

¹⁸⁸ Forscher Testimony, *Wilmington Briefing*, pp. 52-53.

¹⁸⁹ Brunson Testimony, *Wilmington Briefing*, pp. 122-23.

¹⁹⁰ Marvin Mailey Testimony, *Wilmington Briefing*, pp. 270-71.

biases.¹⁹¹ Some of these issues and problems come about as a result of being exposed to tragedy, carnage, and lack of respect humans have for each other on a daily basis. Many officers have a mindset that reflects an unwillingness to share that they are burnt out, so in part, these initiatives should focus on addressing issues such as lack of sleep, constantly working long hours, and the like, to help agencies deal with the issues of burnout that run counter to community-policing.¹⁹² Often, they do not even recognize that they have a problem until complaints are filed against them.

On the other hand, “no-snitch” cultures inside some police agencies can make it impossible to distinguish between “bad apple” officers and burn out. Without leadership that value responsibility, respect, and accountability, this ethos will continue. If officers continue to be rewarded for refusing to report on or testify against each other, it is unlikely that those “bad apples” will ever be removed from the department – and that burnt out officers will ever receive the necessary support – which subsequently stifles improvement. When “bad apple” officers are supported and upheld by the system, community policing, relationship and trust building, and the betterment of public safety are at great detriment.¹⁹³ If an officer is involved in trauma, mandated psychological intervention, therapy, or speaking with crisis- and stress-management trained peers can help.¹⁹⁴ Agencies’ cultures must necessarily be dedicated to the accountability and discipline of officers;¹⁹⁵ when law enforcement agencies invest in programs or educational initiatives for officers, the agencies prove that they value their officers. This likewise contributes to the humanistic approach – building dedication and pride in the job – that will be reflected in community interactions.¹⁹⁶

a. Valuing Soft Skills in Hiring

When officers go to the communities and spend valuable time investing in worthwhile interactions, e.g., knocking on doors to engage with residents, playing basketball with children, they show and grow their humanity. These actions help residents to stop viewing officers only as the badge and the gun, but as people with whom real, honest, and trustworthy relationships are built.¹⁹⁷ Therefore, in addition to proximity to the community, *soft skills* such as empathy, respect, courtesy, and compassion are integral skills for all people of all professions.¹⁹⁸ These soft, interpersonal skills tend to be inherent capabilities; it is difficult or impossible to acquire such skills from training.

¹⁹¹ Bond Testimony, *Wilmington Briefing*, p. 260.

¹⁹² Wray Testimony, *Wilmington Briefing*, p. 60.

¹⁹³ Livingston Testimony, *Wilmington Briefing*, pp. 165-66.

¹⁹⁴ Bond Testimony, *Wilmington Briefing*, pp. 327-28.

¹⁹⁵ *Ibid.*, 332.

¹⁹⁶ Calhoun Testimony, *Wilmington Briefing*, p. 183.

¹⁹⁷ Livingston Testimony, *Wilmington Briefing*, pp. 158-59.

¹⁹⁸ *Ibid.*

They must be included as a major facet of hiring processes.¹⁹⁹ Although recruitment of police officers often focuses on things such as legal competency or physical skills, these soft skills have proven vital in terms of building and keeping public trust. The hiring process for most, if not all, police agencies starts off with physical agility assessments, written aptitude testing, polygraph testing and background checks, a psychological assessment, and then a final interview with the agency's Chief.²⁰⁰ While portions of the psychological evaluation may examine the important aspects like empathy, sympathy, and compassion, another equally important factor to evaluate in the future are the personality traits, tendencies, and belief systems that could indicate implicitly or explicitly held biases.²⁰¹

b. Outcome Metrics, Data, and Transparency

Improving data transparency and collaborating with the public can help to address some of the root issues impacting the relationship between police and communities. Reliable data and data transparency around who, where, when, and why people are stopped or arrested, under what circumstances, along with basic demographic information, are essential. These data can be used to mitigate the structural problems that communities of color, researchers, and advocates face when trying to evaluate police procedures and behavior; to propose policy changes; and to improve the interactions between the police and communities of color. Dr. Nolan testified in favor of building *interdependent communities*, stating:

What I am proposing here is in thinking about policing as a new game, building interdependent communities so that rewards and recognition are aimed at fixing problems and not just in the number of arrests, the number of drug seizures, the number of gun seizures. These are the things that the police generally say are what will make - or they think what will make - places safe. I am arguing that that actually works against the problems. So, the root of the problem, for me, is the law enforcement game. The existing game emphasizes police outputs. The game demands disposition. It creates a disposition on the field of play that runs counter to community building; the game produces implicit bias and works against procedural justice and police legitimacy and attempts to change the disposition without changing the game. It hasn't worked for over 50-years and it's not likely to work unless the game changes.²⁰²

Although law enforcement outcome measures that tend to emphasize numbers of arrests, drug or gun seizures, and the like are generally thought of as improving community safety, they actually run counter to community building, produce implicit biases, and work against procedural justice and police legitimacy.²⁰³ When the mindset of officers is that their purpose is to go into

¹⁹⁹ Forscher Testimony, *Wilmington Briefing*, pp. 74-75.

²⁰⁰ Akil Testimony, *Wilmington Briefing*, p. 261.

²⁰¹ Bond Testimony, *Wilmington Briefing*, p. 261.

²⁰² Nolan Testimony, *Wilmington Briefing*, pp. 84-85.

²⁰³ *Ibid.*

communities looking for people to stop or arrest, in order to meet their numbers/quotas, their legitimacy is fundamentally questioned. This is an issue that drives a wedge between the communities and officers and contributes to systems of distrust.²⁰⁴ There are laws and practices in place that are outdated and need to be reviewed. But, as explained by Lieutenant Fred Calhoun, “to say that people shouldn’t be arrested is a problem”—if someone is “breaking the law and [police] don’t do anything about it,” then “what help will that community get?”²⁰⁵

While many law enforcement agencies, courts, and Public Defenders’ offices keep statistics to track police officer conduct, offenders, and recidivism, and etc., these statistics are not always easily accessible to the public.²⁰⁶ The Delaware Criminal Justice Council has begun this process by collecting and reporting on Disproportionate Minority Contact Data²⁰⁷ for juveniles in the system and has even begun collecting better data on disproportionate minority contact in the adult system—not only at the arrest stage, but throughout every decision point where discretion can be applied.²⁰⁸ Without these data being readily available and open to the public, there is no guarantee that police are being held accountable and that their practices are free from bias.²⁰⁹ The events in Baltimore, Ferguson, New York, and other communities where police have killed unarmed citizens, have had a considerably negative impact on the perception of policing throughout the U.S. That said, these events are opportunities for police to become more transparent, more inclusive, and more committed to providing the safety that all communities deserve.²¹⁰

²⁰⁴ Ibid., 114.

²⁰⁵ Calhoun Testimony, *Wilmington Briefing*, p. 219.

²⁰⁶ McRae, *Wilmington Briefing*, p.134.

²⁰⁷ See *Appendix B.1: Delaware Criminal Justice Council (CJC): Disproportionate Minority Contacts (DMC) - Compiled Annual Reports (2011 through 2015)*. See *Appendix B.2: Explanation of Relative Rate Index (RRI) for Disproportionate Minority Contact (DMC) Annual Reports*, (2017).

²⁰⁸ Kervick Testimony, *Wilmington Briefing*, p. 304.

²⁰⁹ McRae Testimony, *Wilmington Briefing*, p.134.

²¹⁰ Kervick Testimony, *Wilmington Briefing*, p. 303.

IV. FINDINGS AND RECOMMENDATIONS

Among their duties, advisory committees to the Commission are authorized to: (1) advise the Commission 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) initiate and forward advice to the Commission upon matters that the Advisory Committee has examined. (45 C.F.R. § 703.2) Based upon its review, the Delaware Advisory Committee submits the following findings and recommendations for the Commission's consideration:

A. Findings

1. Implicit biases are internalized prejudices or stereotypes that affect a person's understanding, attitudes, actions, and decisions. These biases exist in all people and operate at a subconscious level without the individual's awareness of the source. Implicit biases can lead to mistreatment, especially in situations where the individual is unable to stop and think about the decision before it is made.
2. Biased policing occurs when law enforcement inappropriately considers race, ethnicity, and other factors when deciding with whom or how to intervene. Law enforcement trainings targeted at *eliminating* implicit biases are not likely to work. However, police agencies that take a comprehensive, introspective approach to address biases are much more likely to mitigate the influence of bias.
3. Law enforcement officials face many institutional, systemic barriers to improving community outcomes and increasing public trust. Police are obligated to enforce even those laws and policies that disproportionately affect minority communities, there is a real lack of substantive, transparent data collected and available for analysis; and the mandated use of outcome metrics (that tally traffic stops, arrests, or convictions as indicators of progress) neglect to assess communities for peacefulness or safety.
4. Policing in many isolated, disadvantaged communities of color is more aggressive than in other communities. Residents of these areas often perceive policing tactics as harassing or violent. People of color often report witnessing or experiencing violence or other misconduct inflicted by police officers—most commonly physical—and express concern about aggressive policing, especially for low-level offenses.
5. White youth in high-crime neighborhoods tend to report being mistreated by police only when they are in “black neighborhoods,” “with black people,” or “dressed in hip hop clothing.” Generally, white adolescents experience much lower rates of negative interactions with police as compared to youth of color in neighborhoods with similar crime rates.
6. People are more likely to obey the law and trust police when they feel that officers have legitimate authority. In forming these opinions, people do not only draw from their personal lived experiences, but they also take into consideration the collective or “accumulated discriminatory experiences” of their families, communities, and racial group(s) as well. The

public is more likely to impart this legitimacy when and if police are perceived as being courteous, respectful, and acting in procedurally justified ways.

7. The militarization of police throughout the country has resulted in a “warrior mentality” that promotes an “us-versus-them” culture, adding to the disparate policing practices in communities of color.
8. Empathy, sympathy, respect, courtesy, compassion, and other “soft skills” are integral aspects of the training and hiring of police officers.
9. A lack of police proximity to and knowledge on the social and cultural circumstances for many in these communities, including the impact of racial disparities in the criminal justice system, has a direct adverse effect on police-community relations. Engaging community members, businesses, religious organizations, and others with “social capital,” can improve communication and build trust between the police and communities of color.
10. The Wilmington Police Department has a marked history of aggressive policing and using procedurally unjustified and controversial tactics, such as suspicious traffic stops, when policing minority neighborhoods.

B. Recommendations

Based on these findings and prior research on effective policing, the DE SAC offers the following recommendations. These are intended to improve the fairness and perceived equity of policing, and to result in increased safety for both community members and police officers.

1. Law enforcement agencies and officers must acknowledge that implicit bias exists, negatively impacts safety, and is ineffective for policing. To help officers recognize, understand, remain vigilant of, and learn how to mitigate the influence of their own implicit bias(es), exercises must be all-encompassing—including not only trainings, but also the agency policies, procedures, culture, values, and other aspects that impact the issue.
2. Law enforcement leadership, hiring, and training practices should be redesigned to emphasize a culture of “constant improvement,” introspection, and the importance of soft skills, as discussed in this report. *See*, page 28.
3. Law enforcement officials should seek to develop trust and rebuild relationships with communities of color by focusing more on community building than on arresting and punishing residents, which, in turn, will center the original goals of policing: *to protect and serve*. This *community policing* approach to law enforcement is an organizational strategy that empowers the community to work together with police to solve acute and long-term problems of crime, disorder, and safety, while also improving the quality of life for all community members.
4. Improving police-community communications is necessary and can be done by engaging **with** and empowering citizens, businesses, and other community groups with “social capital” to address the issues.

5. Respect is important. If community members do not believe in the legitimacy of the police and policing procedures, then they are unlikely to accept and respect the authority of the police. In order to reduce some of the contemporary problems in policing, respect must be at the forefront in police officer training curriculum. Leadership should focus on teaching officers the importance of giving respect to and appropriately achieving respect from the community.
6. A collaborative effort between law enforcement and the community is needed to build trust. Transparency, accountability, and responsibility must come from both law enforcement officials and the community.
7. Police officers need to be held accountable for their actions. If they are acting in an unfair way, they are not serving the public. Accountability processes and procedures must necessarily be fair for police officers; if they perceive that they are being unfairly blamed, they may get defensive and feel threatened, which could take away the opportunity for proactive work.
8. Traffic stops are considered the most dangerous points of contact for police officers; thus, these encounters may initiate a sense of hypervigilance. Law enforcement officials should work to educate the public about what to do and what to expect when a police officer makes a traffic stop.
9. Police Departments in Delaware and across the country should no longer accept military surplus weaponry equipment and should be transparent about the equipment they currently have. It is disproportionately used in communities of color and contributes to the “warrior,” or “us versus them,” mentality.

V. DISSENTING VIEWS

A. Joint Dissent by Susan Dixon and Patrick Donahue

After an extensive review of the material and testimony, it is apparent that the majority of the Committee had a pre-determined and biased narrative based on its interpretation of policing events that occurred outside Delaware. The text is tilted against law enforcement and both context and relevancy are missing in many portions of the report. Therefore, we disagree with the final Report, its Findings and Recommendations. The following is a partial list of comments and objections to the Committee's biased report:

P. 6 – Disparities disappeared when all factors were considered.

P. 9 – Only 105 people attended three meetings in a city of 71,000 people.

P. 9 – “Aggressive policing” not a respondents’ issue in 2015 Wilmington Study.

P. 16 – Normal police de-escalation tactics described as biased, unjust, and unsafe.

P. 18 – General statements made without context – no statistics.

P. 19 – Attorneys received \$512,163; 5 plaintiffs received awards, ranging from \$1,500 to \$14,500; 800 ACLU complaints 55% to 60% from inmates; others about employment discrimination, family court issues, and public schools.

P. 21 & 22 - Statements about national stories mixed with statements about Wilmington forming conjecture.

P. 22 & 23 – Mischaracterization of items, which include night-vision goggles, radar systems, and explosive ordnance disposal robots. Military vehicles are used for weather-related emergencies.

P. 27 & 28 – Extensive references to Prof. Nolan, who has not been a police officer for, at least, 17 years. He proposes an unworkable, model of policing on **P. 32**.

P. 28 – According to this example, community mistrust is based on officers legitimately carrying out their duties.

On the issue of implicit bias, evidence does not support a connection between implicit bias and discriminatory behavior (pp. 3–6). Recent studies confirm that the IAT is unreliable and invalid as a test. Reliability is based on test-taker achieving roughly the same score. Implicit Bias testing cannot even establish that the same person has the same bias on multiple tests. (pp 23-25). “The IAT bias scores have a lower rate of consistency than is deemed acceptable for use in the real world” ($R = .42$, at best $R = .55$, well below the standard $R = .8$) “There are concerns over the validity of the test and even Greenwald and Banaji (the creators of the test) now admit that the IAT does not predict biased behavior.” [MacDonald, H., (2017), *Are We All Unconscious Racists?* In *City Journal*.]

Background material must be relevant to the discussion and balanced. Many of the studies cited in the report are not related to policing in Delaware and are over 25 years old. For example, the report includes an outdated, 33-year old study about white bystanders’ behavior toward black victims; that study does not include research about how black bystanders reacted to white victims. Any current studies, based on an old behavioral study, must be considered suspect.

The committee’s report fails to acknowledge the role that the community plays in interacting with police. Capt. Faheem Akil said, “the failure to acknowledge that the public has implicit bias against officers.” He also spoke to a deeper issue, “[w]e are seeing...a lot of children [who] are not really respecting just authority, not just police authority, just regular authority of adults in their own parents and grandparents.”

In closing, the report fails to include positive information. Chief Marvin Mailey received an NAACP award for community policing. Lt. Fred Calhoun and Vice-Chair Enid Wallace-Simms discussed distributing literature at schools as a means of improving police and community relations. During a time of political polarization, it is important to fairly address police and community relations. This report fails to do so.

B. Dissent by Michael Fleming

The creed of liberty – equal rights and justice for every citizen – is a shared, sacred contract that defines and secures our unique identity as Americans. The abrogation of those inalienable, *civil* rights is both deeply morally wrong and illegal. The United States is the fairest and most generous nation on Earth, yet regrettably our history is still pocked with marks of the failure to meet the high ideals we claim as implicit to our citizenship; this includes racial discrimination that marginalized and disadvantaged individuals and communities, most notably African Americans.

Racial prejudice and its pernicious effects still exist here and in societies everywhere. Most atrocious and unacceptable, however, are the occasions when the very government empowered by its people to uphold and protect individual rights instead ignores or takes them away. This includes police misconduct and unfairness in our criminal justice system. The desire to understand and address these wrongs, specifically in the context of improving police-community relations and public safety in impoverished, crime-ridden neighborhoods, inspired my interest in the Committee's work and I am thankful for the opportunity to have participated and learned over the last several years. I also appreciate the efforts of the Drafting Workgroup and inclusion of several important changes that make the final product superior to early drafts. Unfortunately, I am unable to endorse the entirety of this document, for these principal reasons:

Scope and citations – Witness testimony and statements for the November 2017 hearing were extensive and diverse, and the single occasion the Committee considered the same material together. This 16,000+ word document includes significant sections and subjective assessments based substantially on, and drawing explicitly from, academic studies selected by Commission staff that were not part of the hearing, do not reflect the balance of the testimony and that I have not the time nor professional acumen to sufficiently evaluate for their rigor or relevance. **Practical Relevance of Implicit Bias** – Information and testimony presented show a lack of evidence of effective training in this area and leave me unconvinced of the specific practical relevance for policy changes that would improve policing in communities of color. **Overall Thrust and Tone** – Testimony and literature cited do not adequately reflect the broad tenor, substance or insights of the hearing dialogue. For example, the four most influential police executives in the state participated – chiefs of the largest departments, three of them African American – but the report only includes a small reference to the testimony of one. **Findings and Recommendations** – There is not sufficient space here to adequately articulate my reservations about this section so I will close with my own conclusions. Racism in policing is outrageous and those who practice it must be removed. Trust between law enforcement and the communities they police is essential – its absence can imperil both law-abiding citizens and police. People want and deserve to know that police are there to protect them, not arrest them. It obviously benefits everyone for police to adopt strategies and tactics that build trust and result in better outcomes. Smart police leaders across the country are doing this, including here in Wilmington where community policing models are being implemented with some success. These approaches include stronger recruitment from high-crime communities, emotional intelligence and communications training and focused engagement and outreach¹. Ultimately, police performance is the responsibility of the elected officials charged with agency oversight. Communities enduring violence and crime must hold those leaders accountable for any failure or success.

¹ An example is the *Princess and Police Ball*—an annual event sponsored by the New Castle County Police Department. Bond Testimony, *Wilmington Briefing*, pp. 263-264.

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PANEL 1: Implicit Bias – What it is and Why it Matters

Patrick S. Forscher, Ph.D., Assistant Professor, Psychological Science, University of Arkansas

Professor Forscher explained that implicit bias is defined as the automatically activated association about social groups. They are “acquired early in life through repeated exposure to common stereotype information. These stereotypes become so well-rehearsed in our minds that over time, they come to mind relatively automatically and without any conscious intention on the part of the person who sees a stereotype group member;” implicit biases affect behavior in situations where individuals lack motivation, awareness, or the ability to think before they act.²¹¹

There are hundreds of studies about implicit bias and they tend to come in two varieties: The first are those that measure the existence of implicit bias and its effect on behavior (i.e. the distance people sit to black people). The most popular measurement used in this kind of study is the *Implicit Association Test* (IAT). While there is some debate as to whether IAT has all the properties that are desirable to make it a reliable and valid measurement tool, “it doesn’t necessarily invalidate the other ways of looking at unconscious influences, but it does cast into doubt some of the evidence.”²¹² The second variety of study, of which Forscher’s recent work has been focused, examines how to change these existing biases. He and his colleagues reviewed over 400 research studies (with over 80,000 participants) spanning a 20-year period to understand: (1) do changes in implicit bias persist over time? and (2) do they generalize behavior?²¹³ In spite of the fact that the studied interventions affected implicit bias, only seven percent of these affects lasted longer than 24 hours, and there was no evidence that the interventions actually changed the desired behavior(s).²¹⁴

None of the studies Professor Forscher reviewed studied law enforcement officials, therefore there is no way of knowing if the findings are reflective of police settings. Because “research focuses disproportionately on the short-run effects of changes in implicit bias and uses behavior that has little relevance to policing,” there is really no way to inform public policy with these findings. Further research is needed to understand specifically how these interventions can be made appropriate for law enforcement.²¹⁵ Forscher clarified later: “When I say that there is not much evidence for implicit bias affecting policing, I am not saying these aren’t problems;” “police treating white people with more respect than black people, that’s a problem whether you think of that as arising from unconscious processes or conscious processes.”²¹⁶

²¹¹ Forscher Testimony, *Wilmington Briefing*, pp. 10-11.

²¹² *Ibid.*, 45.

²¹³ *Ibid.*, 12-13.

²¹⁴ *Ibid.*, 12-14.

²¹⁵ *Ibid.*, 16-17.

²¹⁶ *Ibid.*, 46.

Professor Forscher compared implicit bias to an unwanted habit that one must break with motivation, awareness, and effort.²¹⁷ Although the building of “counter-habits” is not effective to reduce biases, what has been effective is how introducing the intervention increases peoples’ awareness of and concern about the issue, in turn making them more motivated to correct problems, “implicit and explicit,” when they occur.²¹⁸ Forscher thinks that the correct target of change is motivation, not necessarily the implicit bias itself: when you “motivate people, make them aware of when they might act counter to their intentions, and then have them practice, that’s targeting motivation.”²¹⁹ In thinking about persistence of change, Forscher explained that the focus of change may not need to be implicit bias, per se, but things like discrimination in society and establishing a law enforcement culture that actually cares more about fairness and talks openly about issues and how to improve. In order to make a change that lasts, there needs to be “forward-thinking people in the leadership team.”²²⁰

Forscher highlighted that it is important to distinguish between accountability and blame in training settings. If accountability is too heavily emphasized in training, people may feel as though they are being blamed and withdraw or get defensive, which acts as a barrier to “doing the job in a fair way and developing public trust.” While this may be sort of a trade-off from a training perspective, mechanisms for accountability are necessary. Police must be accountable for their actions because their purpose is to serve the public, so if they are acting unfairly, they are not serving this purpose.²²¹

When asked about “shooter bias,” or the theory that white people are more often willing to shoot unarmed black suspects than unarmed white suspects, Professor Forscher responded that there were 15 or so studies examining this phenomenon. Amongst those, the findings are consistent that there is a bias in the time they took to shoot, but no bias in the errors. In other words: people shot blacks more quickly than they did whites, but they did not tend to make errors like “accidentally shooting black people with tools.”²²²

David C. Wilson, Ph.D., Associate Dean for Social Sciences, College of Arts & Sciences and Professor, Political Science & International Relations, Psychological & Brain Sciences, University of Delaware

Professor Wilson is a political psychologist who studies individual and collective behavior. In particular, he examines individual and societal allocations. Society allocates things like opportunities for education; fair housing; funding for parks and national resources; or votes. Individuals allocate their feelings and emotions (respect, anger, or pity); judgements on how people should be treated; statuses and privileges; liberty and freedom; or membership and identity.

²¹⁷ Ibid., 60.

²¹⁸ Ibid., 61.

²¹⁹ Ibid., 67-68.

²²⁰ Ibid., 52-53.

²²¹ Ibid., 73-74.

²²² Ibid., 41.

He examines these allocations related to not only the actual act of giving, but the level, the amount of time, the extent of the “giving to specific actors and not others,” and how these are based on specific conditions.²²³ Wilson explains that people allocate liberties based on whether or not an individual has formally or informally violated the social contract—“if they violate those rules, then they deserve certain standards of treatment.”²²⁴

Wilson defines implicit biases as “preferences for or against any social phenomena including groups, identities, individuals, institutions, laws or norms, or other matters that have a political outcome.”²²⁵ Wilson explained that “volumes of research on implicit bias are pretty undeniable on this point, unconscious bias can lead to mistreatment. They can lead to the denial of civil and political rights. They can lead to opposition to groups and what groups get, especially group helping behaviors or support for ameliorative policies.”²²⁶ Implicit biases operate at the unconscious level without the individual’s awareness of the source. Wilson continues: “It is impossible to not have implicit biases; they are a [natural] part of human behavior and [everyone] is subject to their implicit influences.”²²⁷

The most widely used tool for examination of implicit bias is the *Implicit Association Test* (IAT), which forces people to associate positive and negative traits (like “smart” or “violent”) with objects (like racial groups, genders, or religions). Things that are psychologically consistent or consonant (like “beautiful princess” or “dangerous sharks”) take less time to think about, whereas things that are inconsistent or dissonant (e.g. “beautiful shark”) take more time because the connection is unexpected. Decades of research has shown that a consensus of people associate minority groups of people, especially African Americans, with negative traits.²²⁸ Wilson addresses the controversies surrounding the IAT. He states that there is a debate on whether the test measures “prejudice” or “bias,” but, regardless of what one calls the results, “they clearly show that an association is more or less present in one’s mind that therefore has the potential for impacting one’s decisions and judgements.” Additionally, he explains: “Reliability is a measure of the test’s ability to measure the same thing over and over again,” and because all IAT tests are based on the premise to associate traits with objects, “when people take the test over and over again, they learn how to perform in the test” to produce socially desirable answers.²²⁹ Implicit bias tests are intended to demonstrate that the phenomenon of implicit bias exists and do not purport to change behavior. This is why, as Wilson explained, “it should not be a surprise that implicit biases as measured by schools in laboratory settings don’t last for a long time. They were not designed to do that.”²³⁰

²²³ Wilson Testimony, *Wilmington Briefing*, p. 18.

²²⁴ *Ibid.*, 18-19.

²²⁵ *Wilson Additional Statement*.

²²⁶ Wilson Testimony, *Wilmington Briefing*, p. 20.

²²⁷ *Wilson Additional Statement*.

²²⁸ *Ibid.*

²²⁹ *Ibid.*

²³⁰ Wilson Testimony, *Wilmington Briefing*, pp. 19-20.

Professor Wilson talked extensively about approaches to mitigate implicit bias for police. He suggests engaging law enforcement actors in settings where their personal rights and freedoms are violated, because the “discomfort that comes from that kind of situation may serve as an emotional queue down the road and become a reversing of implicit bias.”²³¹ Implicit biases are like bad habits, Wilson stated, so trainings intended to eliminate implicit biases as a condition of employment are not likely to work. “You have to be aware of the habit,” explains Professor Wilson, then you have

to desire to break that habit; “You have to have a deep understanding of when, where, and why the habit occurs. You have to have a set of tools that tell you to stop and think before you act. You can't train away implicit biases, they are implicit. They are there.”²³² Without rewards and punishments in place, the training effects are not likely to continue past the short-term. Training initiatives that focus solely on changing or eliminating implicit bias are not going to work. Instead, Wilson explains, that they should reinforce the consequences of mistakes; “and that means having some serious discussions with unions, and unions having serious discussions around what criteria is used for promotions—the sanctions and reward systems.”²³³

When asked about how to address issues of deniability (i.e., implicit bias does not exist) and safety while still acknowledging the dangers and difficulties of police work, Wilson indicated the importance in “reinforcing the notion that persons in law enforcement are serving the public.” While police work can be dangerous, there are certain rules of engagement surrounding the ideals, values, and mission of public service.²³⁴ Recruitment tends to focus on legal competency or physical skills, but there are other, softer skills that may be equally important to consider as criteria. Empathy and considering the feelings and positions of others “are real skills that are needed for public trust.”²³⁵ These are typically inherent abilities and should be the focus of hiring rather than training. If officials are worried about being blamed for misconduct, then they may not be the right people for law enforcement. Likewise, the public has a civic responsibility, so both groups should be held accountable to some extent.

James M. Jones, Ph.D., *Trustees Distinguished Professor, Psychological and Brain Sciences, University of Delaware*

Professor Jones is a social psychologist who examines and researches matters of race or ethnicity and justice. Jones explained that his comments would address what implicit bias is, how it works, and how it affects decision-making.²³⁶ Referencing Daniel Kahneman’s book, *Thinking, Fast and Slow*,²³⁷ Jones explained that humans have two thinking processes: System 1 and System 2. System 1 processes are automatic and operate below conscious awareness. This automatic process is a significant source of “much of what we think of who we are.” System 2 processes, on the other

²³¹ Ibid., 24.

²³² Ibid.

²³³ Ibid., 65.

²³⁴ Ibid., 70.

²³⁵ Ibid., 74-75.

²³⁶ Ibid., 26.

²³⁷ Daniel Kahneman, *Thinking, Fast and Slow*, (New York, NY: Farrar, Straus, and Giroux, 2011).

hand, are “more rational, more deliberative, effortful, slow.”²³⁸ These “implicit biases or unconscious processes” are derived from experience and consciously or unconsciously learned over time through “stereotypes, social judgments about what is good and bad, what is right and wrong, what is probable and improbable.”

Because “we are not ultimately, functionally aware,” and thus cannot control or influence our automatic thoughts and assumptions, the System 1 processes, or “subtle implicit influences” have a profound effect on our System 2 processes, or our conscious beliefs, values, judgements, and behaviors.²³⁹ These kinds of judgements profoundly affect how humans act, feel, and behave; they influence behavior without awareness, causing “errors in our judgment and behaviors that are based on erroneous thinking.”²⁴⁰ Jones explains that the inability to influence these unconscious thoughts is exacerbated by two fundamental things: time and emotion. “When time is short, we rely on System 1 processes. They are automatic and effortless. They take over. We don’t have time to cogitate, to think,” or to use effort in that processing. Emotions are impactful because they “flood us biologically, neurologically, and psychologically, and they take away that deliberative capacity.”²⁴¹

There is a general consensus among academics concerning the existence of implicit bias. While Professor Jones hesitated to state that there is proof “beyond a reasonable doubt,” there are myriad studies that show a variety of consequences resulting from behaviors produced by unconscious biases. Some are trivial, some are more meaningful, but the large volume of studies spanning across a long period of time—what was called the “cognitive revolution”—demonstrates these kinds of responses exist.²⁴² Research²⁴³ has proven that people are more attuned to criminally-related images when images of black people are salient in their minds. Presumably, this is because of the pervasive stereotype that being black denotes criminality. Jones explains that this research indicates that “not only are blacks thought of as criminals, but also crime is thought of as black, and that association is very strong.”²⁴⁴

Professor Jones emphasizes the importance of understanding that police officers are subject to the same kinds of flawed perceptions and behaviors as everybody else. While tests may not have been explicitly used to study police officers’ biases, “the biases that we see routinely and [have understood] for a long, long time in our scientific field” are undeniably still operating in their heads and in their environments.²⁴⁵ For officers to address and mitigate these biases, Jones suggests a long-term practice approach: “It’s not a half an hour, half-a-day training, or a weekend training,

²³⁸ Jones Testimony, *Wilmington Briefing*, pp. 26-27.

²³⁹ *Ibid.*, 27.

²⁴⁰ *Ibid.*, 27-28.

²⁴¹ *Ibid.*, 28-29.

²⁴² *Ibid.*, 44.

²⁴³ Jennifer L Eberhardt, Phillip Atiba Goff, Valerie J. Purdie and Paul G. Davies, “Seeing Black: Race, Crime and Visual Processing.” *Journal of Personality and Social Psychology*, 87(6) (2004): 876-893.

²⁴⁴ Jones Testimony, *Wilmington Briefing*, p. 31.

²⁴⁵ *Ibid.*, 42-43.

it's a systematic set of actions that are designed as skill builders so that when you face those challenges, you have an arsenal of skills that allow you to mitigate the response which is probably prepotent."²⁴⁶ He continues: "The point about implicit bias is not that we can get rid of it, it's that we sever its connection to our beliefs and our behavior, and once we sever that connection, then we are able to act on what we intend."²⁴⁷ In addition, Jones suggests the key to improving police/community relations is respect in both directions. If the community does not believe in or respect the police, then they will not accept their authority, and the reverse.

Therefore, another element of training curriculum should focus on how important respect is for these relationships and how one can appropriately achieve it.²⁴⁸

Nobel Wray, Former Chief – Madison Police Department, Wisconsin, and Anti-Bias Policing Trainer

Nobel Wray has 30 years of experience in law enforcement. He has worked on creating and implementing training programs in police departments across the country from Ferguson, Missouri to Baltimore, Maryland. He explains that his trainings are focused on all levels of law enforcement—from the officer to the chief—and even include the command-level, which involves inviting the community to participate. His trainings help officer to understand that all humans have implicit biases, and so "even the best officers, because they are human, have implicit bias."²⁴⁹

Mr. Wray has found that officers are particularly responsive when he uses the following conceptual definition: "Biased policing occurs when law enforcement inappropriately considers race, ethnicity, or other factors in deciding with whom or how to intervene."²⁵⁰ In training, Mr. Wray explains the science and the research behind implicit bias and emphasizes how it impacts officers' work.²⁵¹ Categorization is the process by which ideas and objects are recognized, differentiated, and understood. Social science indicates that "implicit systems produce mental shortcuts" and so people categorize things; this notion, also called the "blink response," includes "linking people onsite to stereotypes associated with their group."²⁵² He continually iterates to his trainees that "implicit bias or biased police is unjust, unsafe, and ineffective."²⁵³

Training programs that are most effective in mitigating the influences of implicit bias, Mr. Wray explains, are those that are comprehensive, engage the community, and incorporate the aspects of police culture. The training cannot be done in isolation, he states: "It must be a comprehensive plan encompassing this—training, policies and procedures, culture, values, all of those things have

²⁴⁶ Ibid., 58.

²⁴⁷ Ibid., 66-67.

²⁴⁸ Ibid., 71-72.

²⁴⁹ Wray Testimony, *Wilmington Briefing*, pp. 35-36.

²⁵⁰ Ibid., 35.

²⁵¹ Ibid., 34.

²⁵² Ibid., 35.

²⁵³ Ibid., 39.

to be a part of it.”²⁵⁴ He explains that the best training he has ever experienced was when officers and citizens were in the room, because “a light tends to go on where people realize this is a human thing.”²⁵⁵ It is really important to reinforce the importance of slowing down and communicating with the community. Wray stresses, to the police and to the community: “If you can slow down, slow down. If you can reduce ambiguity, reduce ambiguity.”²⁵⁶ Mr. Wray continues to explain that implicit bias training does not work “unless there is a culture within an organization of constant improvement, because it is one of those things that you have to be introspective and believe that is occurs.”²⁵⁷ Wray concludes that when you start from a point of explaining that everyone has implicit biases and “no one gets a pass,” you can demystify and reduce anxiety about it, which reduces resistance.²⁵⁸

²⁵⁴ Ibid., 37-38.

²⁵⁵ Ibid., 38.

²⁵⁶ Ibid., 60.

²⁵⁷ Ibid., 38.

²⁵⁸ Ibid., 49.

PANEL 2: Policing in Communities of Color – an Overview

James Nolan, Ph.D., Professor, Sociology & Anthropology, West Virginia University

Professor Nolan was a police officer in Wilmington, Delaware, for 13 years before becoming a professor at West Virginia University. He spent sabbatical in Wilmington studying policing issues and neighborhood dynamics. Implicit bias is a major issue in policing; another pressing issue is that the policing “game” is structured primarily to enforce laws. Officers “assume that the cause of the problems are the bad guys, the criminals, and they are going into communities looking for criminals to lock up,”²⁵⁹ instead of understanding that “there is no such thing as a criminal nature, there is no such thing as a criminal mind. All we have is human beings making decisions within a context.”²⁶⁰ Between 2010 and 2015, for instance, the most common arrests in Wilmington were for resisting arrest, loitering, offensive touching, larceny, and having an open container of alcohol.²⁶¹

Nolan explains that the policing “game” needs to be reimaged to focus on improving neighborhood contexts and building interdependent communities. His survey research shows only a four percent chance of burglaries, a 15 percent chance of crime occurring, and a 31 percent presence of a fear of crime²⁶² in “interdependent communities” that work to “collectively fix problems” in order to “create a safe environment,” instead of relying solely on the police to intervene. Police can positively contribute to the building of interdependent communities by ensuring that “rewards and recognition are aimed at fixing problems and not just in the number of arrests, the number of drug seizures, the number of gun seizures.” While these aspects are generally thought of by police as improving community safety, Nolan argues that the emphasis on police outputs actually “runs counter to community building,” “produces implicit bias,” and “works against procedural justice and police legitimacy and attempts to change the disposition without changing the game.”²⁶³

When asked about good models for approaching community policing, Professor Nolan explained that in most cities, including Wilmington, “community policing” has been envisioned as “community relations so that the law enforcement, the real police, can continue what they are doing.”²⁶⁴ This approach is ineffective. The mindset of police cannot be to “go into the community and find the enemy, to find people to harass” because that puts “the legitimate purpose of police into question;” going into “communities to work with people to build relationships” will allow officers to “be assessed by that accountability,” which will return the focus of policing from law enforcement back to its original purpose of making places safe.²⁶⁵

²⁵⁹ Nolan Testimony, *Wilmington Briefing*, p. 81.

²⁶⁰ *Ibid.*, 80.

²⁶¹ *Ibid.*, 81-82.

²⁶² *Ibid.*, 81-82.

²⁶³ *Ibid.*, 84-85.

²⁶⁴ *Ibid.*, 113.

²⁶⁵ *Ibid.*, 114.

Implementing data-driven models to improve policing is useful, but these are inevitably limited in their success if there is no shift from “lock[ing] people up” to making the community safer.²⁶⁶

When asked about the effect of police culture on officer reactions to communities of color, Professor Nolan explained that “culture” is an understanding or expectation of “the way people are going to act or behave in certain situations.” In the context of policing, the current culture, or “game,” relies on the expectation that laws will be enforced at all costs, which in turn produces hypervigilance and the image that an “aggressive officer” is a “good officer.”²⁶⁷ Societal and cultural views of police must also shift from this reactionary, enforcement-focused perspective to an expectation of promoting safety. This further exemplifies why the “game” of policing must change to improve outcomes.

Rod Brunson, Ph.D., *Professor & Dean, Rutgers University School of Criminal Justice*

Professor Brunson’s research agenda is shaped by three interdependent areas: police/community relations, concentrated neighborhood disadvantages, and youth violence. The central focus of his work examines disproportionate criminal justice system contact for urban youth in neighborhoods across the U.S. The purpose of this research is to understand the intersections of race, class, and gender to “address some of the police/minority community tensions that currently exist” in society.²⁶⁸ He explains that it is vital to include the experiences of young people with police in communities of color to improve policing policy and practices, because in forming opinions, people do not only draw from their personal lived experiences, but they consider collective or “accumulated discriminatory experiences” of their families, communities, and racial group(s) as well.²⁶⁹ Brunson states: “descriptions of black citizens’ mistreatment by police are abundant across many African American communities, and irrespective of whether all the accounts are totally accurate or that citizens sometimes misperceive the rationale,” these narratives inform why communities come to view policing strategies as racially biased.²⁷⁰

Professor Brunson spoke about how many disadvantaged neighborhoods of color experience a different kind of policing than is found in more affluent neighborhoods. He explained that there is a greater chance that youth in these neighborhoods will directly or indirectly interact with police, since strategies in urban neighborhoods “rely heavily on proactive encounters to address open-air drug markets and other low-level offenses and signs of social disorder,” frequently by way of pedestrian or vehicle stops,²⁷¹ and the tactics used tend to be more aggressive, “commonly associated with the war on drugs and the aggressive enforcement of other relatively low-level

²⁶⁶ Ibid., 115.

²⁶⁷ Ibid., 121.

²⁶⁸ Brunson Testimony, *Wilmington Briefing*, pp. 86-87.

²⁶⁹ Ibid., 89.

²⁷⁰ Ibid., 88.

²⁷¹ Ibid., 94-95.

types of offenses.”²⁷² Residents of color, he found, are particularly frustrated with policing strategies when they are “repeatedly stopped in situations in which they believe there was no basis for suspicion.”²⁷³ The most frequently reported wrongdoings by police toward youth are of physical abuse, but other notable instances of police misconduct include theft, harassment, or being abandoned in potentially dangerous neighborhoods amongst the allegations.²⁷⁴ Although many of these incidents do not result in arrest, they leave the lasting negative impression of police on young people because, among other reasons, individuals’ personal experiences tend to mirror their peers’ experiences with police.

When asked about the kind of behavioral adjustments that result from experiences of police maltreatment, Brunson explained: “black parents, for good reason, have conversations with black youth about how to comport themselves when they are stopped by police.”²⁷⁵ He expresses that although similar criminality extends to economically comparable white communities, there is no evidence that these conversations likewise happen between white parents and their children. Professor Brunson said that the explanation police often give as to why they respond aggressively is that the high rate of crime in these disadvantaged communities makes them more dangerous. This explanation runs counter to his research findings in predominately white disadvantaged neighborhoods. White youth only report being stopped or mistreated when they were in black neighborhoods, with black people, or dressed in “hip hop clothing.”²⁷⁶

In regard to police culture, Professor Brunson stated that it is fundamental to change what is valued and rewarded in policing. If community policing was valued, rewarded, and embraced throughout the organization, police culture would start to shift.²⁷⁷ He added that while it is, in a way, a “two-way-street” to improve community/police relations and build trust, citizens are not professionals and are not held accountable the way police—who have taken an oath to exhibit a particular behavior and demeanor—should be; officers have an internal mechanism to ensure they respond to the public in a certain way.²⁷⁸ One of the main problems with community policing is that “we never really invested in the community part, it’s always the policing part.”²⁷⁹ Professor Brunson stated that morale in police departments is generally quite low, because society has positioned officers in an unsafe and “tenuous relationship with the community” with a lack of supportive mechanisms or tools because they are asked “to do things that may not be aligned with the values that the communities have about what they expect police officers to do.”²⁸⁰ “Good” police work that is legitimate and procedurally just is not going to gain respect from the community because there is a significant foundational problem. The community has to begin to trust the police, and

²⁷² Ibid., 91-92.

²⁷³ Ibid., 95.

²⁷⁴ Ibid., 95.

²⁷⁵ Ibid., 117.

²⁷⁶ Ibid., 116.

²⁷⁷ Ibid., 122-123.

²⁷⁸ Ibid., 122-123.

²⁷⁹ Ibid., 127.

²⁸⁰ Ibid., 124.

that can be done only if the voices of community members are valued in discussions of how to go forward.²⁸¹

Ivan Sun, Ph.D., Professor, Sociology & Criminal Justice, University of Delaware

Professor Sun has 13 years of experience in law enforcement and is now a college professor who focuses his research mainly on the study of police attitudes and behavior and the public's perceptions of legal authorities, particularly police.²⁸² Professor Sun began his discussion by emphasizing the role of procedural justice and legitimacy. Research results show the importance of citizens' perceptions of procedural legitimacy and with "internal procedural justice"—what happens within police agencies.²⁸³ As summarized in the *President's 21st Century Policing Report*: "People are more likely to obey the law when they believe that those who are enforcing it have the legitimate authority to do so. The public confers legitimacy only on those they believe are acting in procedurally just ways."²⁸⁴ This model of policing²⁸⁵ is often called the *Process-Based Model* or the *Procedural Justice Model*. While distributive justice is also likewise important, procedural justice is by far most pertinent to the community. Professor Sun states that the procedure, or the "process in the decision-making," is most important, "not necessarily the outcome." In other words: "It's not about you getting a ticket or getting arrested, it's about how you are treated on the street in a fair, polite, and respectful manner by the police officer."²⁸⁶

Sun discussed his recent research interviewing residents of Wilmington regarding their interactions and feelings toward police officers. He explained that the Wilmington Police Department has a long history of aggressive policing tactics, such as traffic or suspicious stops when policing minority neighborhoods.²⁸⁷ Through this research, Professor Sun found that these tactics are not effective and have drastically reduced public trust in police, especially because the focus is almost exclusively on minority neighborhoods. Citizens view procedural injustice as "something that is expressed by officers through their language, through their attitudes, their gestures."²⁸⁸ One resident expressed: "you just can't violate people's rights, no matter what your intentions are."²⁸⁹ In addition to residents of color, white citizens likewise perceive procedural injustice with Wilmington police. One white resident reported: "I want to trust the police, but it seems like it's getting out of hand." The participant recalled stories of police harassment and assault, such as mimicking the unholstering of their guns, stating: "If police do not have trust, people are not going talk to them, if they feel as though their lives are in danger."²⁹⁰ Professor Sun explained that

²⁸¹ Ibid., 127-128.

²⁸² Sun Testimony, *Wilmington Briefing*, p. 99.

²⁸³ Ibid., 99-100.

²⁸⁴ Ibid., 100.

²⁸⁵ Tom Tyler, *Why People Obey the Law*, (New Haven, CT: Yale University Press, 1990).

²⁸⁶ Ibid., 101.

²⁸⁷ Ibid., 104.

²⁸⁸ Ibid., 101-102.

²⁸⁹ Ibid., 102.

²⁹⁰ Ibid., 103.

experiences of unfair and unjust treatment by police, both directly and indirectly (i.e. through the news, shared personal stories), significantly damage the public's perception of police.

Research also examines internal police procedural justice, or how police are treated by their supervisors. How supervisors, police chiefs, and police departments as a whole treat officers impacts their levels of interpersonal trust and their emotional states, which subsequently has a direct impact on how the officers act to citizens on the street.²⁹¹ If we want officers to treat citizens fairly and with procedural justice, then they must be treated in a fair and just manner within the organization.

Professor Sun stated that there needs to be more research done on police morale, especially in terms of their emotional state. He stated that police are taught to control their emotions and be neutral. There needs to be investigation into if or how officer morale and officer accountability are linked.²⁹² In the context of the Wilmington Police Department, Professor Sun pointed out that he is not surprised that the department generally has very low morale, stating that they have one of the lowest starting salaries for police; one of the toughest working environments; and frequently changing management.²⁹³ To make changes in Wilmington, Professor Sun suggests getting back to the fundamentals of building strong communities: invest in infrastructure, build up the school system, and bring jobs back into the community. Changes need to be made beyond the city, at the state and federal levels, too, because some things are beyond the control of the police department.²⁹⁴

²⁹¹ Ibid., 105.

²⁹² Ibid., 119.

²⁹³ Ibid., 123.

²⁹⁴ Ibid., 128-129.

PANEL 3: Community Advocates on Policing Communities of Color

Kathleen MacRae, MSW, Executive Director, ACLU of Delaware

Kathleen MacRae is the Executive Director of Delaware’s branch of the American Civil Liberties Union (ACLU). Ms. MacRae has lived in Delaware for seven years. She has lived in much more diverse areas, and much less diverse areas, but, she states: “I am appalled to witness firsthand the full impact of discrimination against people of color, not only by the police, but by a wide range of institutions” throughout the state.²⁹⁵ The Delaware ACLU receives approximately 800 complaints a year concerning alleged civil rights violations. 55-60 percent of these are from incarcerated individuals; the balance comes from the general public, regarding anything from employment discrimination, problems in public schools, family court issues, to encounters with police. While the ACLU does not track the race of complainants, she believes that well over 60 percent are from people of color. The ACLU has filed several lawsuits against police departments’ alleged violations of civil rights across the state—including for false arrests, excessive force, unconstitutional detention without probable cause, among other things—and in all cases but one, the complainant was a person of color.²⁹⁶

The militarization and subsequent “warrior mentality” of police is extremely problematic, explains MacRae. The National Defense Authorization Act of 1989 authorized “the provision of military weapons, military vehicles, and tactical training to state and local law enforcement agencies to fight the war on drugs. Since then, it has been well documented that when SWAT team military tactics are used in drug operations the [targets] of the raid [are] overwhelmingly people of color.” Militarization has ultimately instilled an “us versus them” or “warrior mentality” in the police that positions the community as “the enemy to be vanquished, not the community to be protected and served.”²⁹⁷ In response to the suggestion to possibly prohibit police from accepting military surplus equipment, Ms. MacRae said that we should first inventory the equipment in police hands now. She indicated that there is an extreme lack of transparency in this arena and that has to change. In addition to transparency, MacRae indicates that “it’s going to take a lot of different types of training and a lot of very strong leadership” to recognize that this kind of policing is not working. Ultimately, she explains, “training, change of culture, and working very closely with the [Fraternal Order of Police and other police unions] to try to help this come from within is essential to success.”²⁹⁸ This leads to another major issue MacRae identified, which is the lack of data and data transparency. She clarifies: “If the data on who is stopped, for what, and under what circumstances, along with basic demographic data, is not collected and not readily available to the public, how can the police be held accountable?” Moreover, how can it be guaranteed “that police practices are free of racial bias, or at least are heading in that direction, if no data is available to evaluate outcomes?”²⁹⁹

²⁹⁵ MacRae Testimony, *Wilmington Briefing*, p. 132.

²⁹⁶ *Ibid.*, 132-133.

²⁹⁷ *Ibid.*, 135.

²⁹⁸ *Ibid.*, 157-158.

²⁹⁹ *Ibid.*, 134.

These issues make communities feel fundamentally unsafe, which in turn means that crimes often go underreported or unsolved because citizens are not comfortable reporting to law enforcement. MacRae says that “the state of policing in communities of color is in crisis.” Trust between the community and the police has eroded in Delaware and throughout the country for a multitude of reasons. “Police officers do not live in or have much firsthand knowledge of the communities they police;” Moreover, “over-policing of communities of color is the first step in the chain of actions that has resulted in the United States’ mass incarceration problem—a problem that has destroyed communities of color from within.”³⁰⁰

Corie Priest, *In-Reach Coordinator, Wilmington HOPE Commission Achievement Center*

Corie Priest works at the Wilmington HOPE Commission Achievement Center with men returning from incarceration. His work is primarily with individuals who are deemed “high risk,” meaning that their chances of recidivism are quite high if they do not receive appropriate reentry services. Mr. Priest currently works with anywhere from 60-100 formerly or currently incarcerated men; the same stories of distrust are shared across the board. A major source of distrust is that officers often coerce probationers to disclose information about the crimes of other community members. The police will threaten to arrest the person who is on probation, ultimately sending him back to jail, if he cannot come up with information on other people. Mr. Priest states that the mistrust between police and the community is a direct result of the unaccountability for racism, stereotyping, and profiling based on color by the Wilmington Police Department.³⁰¹

Mr. Priest explains that another major cause of discord is the lack of awareness of community circumstances of officers: “Our officers go home, you know, go home at the end of the night, and their home is not where we live at. Their home is someplace else.” Proximity to the community is important, because “lot of the officers are going to families where they don't have to worry about their children eating at night. They don't have to worry about where their next meal is coming from or how their school systems are functioning.” These officers are deeply unaware of the issues facing the community.³⁰²

In addition to the importance of that proximity, for officers to have love and compassion for these communities is essential. He recommends: “[To] just [be] in a community and present, you know, and doing things like knocking on doors and engaging with the community, and going to basketball games and flag football games, and not just looking at themselves with a badge or a gun on their hip, but having a humanistic approach to building up relationships, that’s very important to build up trust in our communities.”³⁰³ While there are some good police officers in Wilmington, “when

³⁰⁰ Ibid., 136.

³⁰¹ Priest Testimony, *Wilmington Briefing*, p. 139.

³⁰² Ibid., 140.

³⁰³ Ibid., 158-159.

you have a few bad apples in the bunch,” it affects all the other officers.³⁰⁴ The culture of the Wilmington police, states Mr. Priest, is that they do not want their officers to care for the

community and its members. When officers do show care and compassion, they are ridiculed—they call it “hug a thug.” It “prevents officers who really want to show care and concern for us in the community to fall back a little bit because they don't want to seem soft in the ranks.”³⁰⁵ He thinks that if this culture could change, then it is likely that the culture in the community could likewise change.

Rev. Dr. Lawrence Livingston, Vice President, Interdenominational Ministers Actions Council (IMAC) of Delaware

Reverend Lawrence Livingston spoke on behalf of the Interdenominational Ministers Action Council. He expressed that there is often a misperception that black, brown, and poor communities are adversely opposed to law enforcement. This is fundamentally untrue; in actuality, “community members demand more, not less, attention from law enforcement, and generally speaking, communities of color want and support law enforcement.”³⁰⁶ Another false narrative about these communities is that they will not cooperate with police because they refuse to “snitch.” Livingston expresses that, above all, people are interested in self-preservation. While they want to help law enforcement, “protection for those who come forward has not been good, and those who want safe neighborhoods are sometimes regarded as giving refuge, protecting or even embracing offenders, when what they really want is to remain safe, which is not guaranteed by law enforcement.” He continued: “It's not that communities don't want policing, but in actuality what people of color do not want is unwarranted dehumanizing and sometimes humiliating interactions with law enforcement. People simply want policing that is humanizing for them as citizens.”³⁰⁷

Livingston explained that a major issue for communities of color is that they are often viewed by law enforcement through a monolithic lens. There is a “perception that there's no separation between people who perpetrate crime and those for whom we need to protect and serve;” “law-abiding citizens are summed up as the same or equal to the people that we do in fact need to lock up.” Further, he said that one issue with the police is a perception that the community and the perpetrators of crime are all alike. Race and racism, especially in regard to the militarization of police departments, must be addressed. He explains: “If we don't figure out ways to deal with race and racism in the nation—certainly in the city and the state—we are going to implode.”³⁰⁸ He referenced a book, *Smart on Crime* by Senator Kamala Harris,³⁰⁹ in which she said that although there are many levels of crime and criminals, many communities experience with the police is that of tactics best used for the most violent criminals who commit the worst crimes. Livingston

³⁰⁴ Ibid., 139-140.

³⁰⁵ Ibid., 166-17.

³⁰⁶ Livingston Testimony, *Wilmington Briefing*, pp. 143-144.

³⁰⁷ Ibid., 144.

³⁰⁸ Ibid., 159.

³⁰⁹ Harris, *Smart on Crime*.

elaborates: “Extreme police presence for arrests, SWAT teams, helicopters at night, and such, those kinds of things are necessary crime-fighting tools, but often the only engagement children in communities see and perceive. The result is perceived as a community occupation rather than community policing.”³¹⁰ He continues: “Militarization is a big issue, but it’s a big issue in communities of color. Militarization is not happening in the majority of white communities.”³¹¹

There are myriad systematic issues that make it extremely difficult to implement community policing approaches. “The bad apples [in policing] are supported and held up by the system,” Explains Reverend Livingston, “they don’t report on one another—how many times do the [other officers] look the other way, do people not even engage in or criticize or make critical comments towards those so-called bad apples? and how much does the [Fraternal Order of Police] participate in that system and uphold and support those systemic issues that are not good?” Livingston says these issues hugely hinder community policing, relationship and trust building, and the betterment of public safety.³¹²

Reverend Livingston believes the solution is community policing, but “it cannot be an effort to establish a more gentle and friendly occupation of the community, but progress that moves us towards true and real community.” He recommended a true community policing approach, that brings an end to us-vs-them mentality by respectfully and meaningfully engaging all parts of the community. One of the most important aspects of this is that law enforcement engage and work with capable people in various sectors of the community—including businesses, non-profits, government, social services, education, and religious institutions—to build up their communities to reduce crime and promote safety.³¹³

Darryl Chambers, Ph.D., Candidate, Criminology & Research Associate, Center for Drug & Health Studies, University of Delaware

Darryl Chambers is a doctoral candidate at the University of Delaware who grew up in Wilmington. Chambers is a part of the CDC Advisory Council; Chair of the Board of Corrections; has been commissioned by the Delaware Governor to work on criminal justice reform projects; and has volunteered on national projects. He expresses that police/community relationships should be constructive, not destructive; a collaborative relationship built on trust is necessary, he stated: “I believe that that trust leads to cooperation, and that cooperation leads to legitimacy, and that legitimacy leads to cooperation.”³¹⁴ He spoke of the need for improved police/community communications and recounted anecdotes of instances where good communications have supported positive police interaction with the community.

Mr. Chambers spoke of the value in using “street identified” individuals, or those with social capital, as liaisons between the police and the community. He explained: “We need that connective

³¹⁰ Livingston Testimony, *Wilmington Briefing*, pp. 142-143.

³¹¹ *Ibid.*, 159.

³¹² *Ibid.*, 165-166.

³¹³ *Ibid.*, 146.

³¹⁴ *Ibid.*, 147.

tissue. We need someone who is able to come in there and talk to [community members], because right now you don't have the trust."³¹⁵ He clarified that "street identified" does not necessarily mean gang-affiliated or formerly incarcerated. Instead, he recommends identifying community leaders and giving them access to key leaders in the police department with whom they could dialogue. He elaborates: "Trust is the foundation and I think that we need to use people who already have that trust, who work in both of those arenas, to use them in ways that we can transfer their social capital to that of the police department."³¹⁶ Chambers expressed that, by transferring the social capital of community members to the police department, the community begins to have access to information within or from the police department, which can help to develop trust and build positive relationships.

Chambers explained that many of the evidence-based, data-driven programs purported to reduce crime in these communities are funded to fail. "We had a program that actually looked at recognizing those tension relationships among citizens; [they used] people with that social capital that I talked about to come in there and alleviate that tension before it [escalated] into a law enforcement matter," explains Chambers. The issue was that the program, designed to be implemented over four years, was only funded for one year.³¹⁷ He stresses that institutional problems are deeply impacting the cultures of these communities. He states: "You have things like the failing healthcare system, a school system that is unable to educate the children. Where you see inside of some of these inner cities, you have 70 percent of them are receiving Welfare benefits and you also see a correlation with that right there being that these kids, only 13 percent have reading proficiency and math proficiency."³¹⁸

Chambers spoke of the complexity of implementing community-based programs. He explains that the Governor may have a great idea, but once it has been passed through the bureaucracy, the implementation is lacking. The officers and people on the ground are either unaware or unwilling to appropriately implement the programs. Mr. Chambers that the "no-snitch" culture inside the City of Wilmington and other police agencies make it impossible to weed out the "bad apples." The norm in these departments, Mr. Chambers explains, is "if I tell on my people then I will be ostracized, and I will no longer be part of the group." If officers refuse to report on or testify against each other, it is unlikely that those "bad apples" will ever be removed from the department, which subsequently stifles improvement.³¹⁹

³¹⁵ Ibid., 150.

³¹⁶ Ibid., 153.

³¹⁷ Ibid., 155.

³¹⁸ Ibid., 161-162.

³¹⁹ Ibid., 163-164.

PANEL 4: Law Enforcement Officers on Policing Communities of Color**Lieutenant Fred Calhoun, *President, Delaware Fraternal Order of Police***

Lieutenant Calhoun spoke first. He works for the Fraternal Order of Police (FOP); the police union represents 2,600 law enforcement officers throughout the State of Delaware. Lieutenant Calhoun has 28 years of experience and has served in different areas of the agency. He mentioned topics that were important to him, such as diversity in the agency. He explained this view that implicit bias and training should be based on both a law enforcement perspective and a community perspective. Lieutenant Calhoun commented on education requirements and the difficulty in finding new recruits. Calhoun explains that in the early stages of the profession, police were required to meet specific educational standards. A lot of agencies provided this education so that they could “show you that they were investing in you.” He stated that this “builds pride and dedication and shows that we are a family.”³²⁰ He suggests implementing programs and initiative that bring back that approach.

Lieutenant Calhoun recounted a meeting with Delaware Supreme Court Chief Justice and various officials on the issue of implicit bias. Implicit bias training, he states, should be given to both law enforcement and the community to ensure that both groups understand it. Calhoun expressed: “There are a lot of things that we in the law enforcement community do that a lot of folks in the community don’t understand, and I have been, for a number of years, concerned that we in the law enforcement community are not targeting the right groups when it comes to training.”³²¹ He explained that police officers are confronted with life and death situations that force them to make a split-second decision on if a person is going to harm them. Calhoun says that today, in light of protests, police officers view every situation as a possible fatal encounter. He mentioned that there are a lot of setups where police officers respond to a complaint and are killed.³²² Police officers receive survival training and their first response is to take charge and, once the situation is under control, to respond appropriately. Officers can adjust their mindset once the situation is under control.³²³

Lieutenant Calhoun replied that changes to police departments are bound by their jurisdictional agreements, but, the area where the most change is possible is through children in the schools. Calhoun suggests incorporating training for community youth and their parents or grandparents, stating that police should teach them what they do, why they do it, and how to react when police approach. He expresses: “I just think society is trying to find that big fix, to fix what’s wrong in the community and the police departments. And as much as people don’t want to hear this, it starts in the home.” He continues: “It takes a strong foundation at home, a solid educational system, and the people will then be able to deal with the police officers, deal with their issues and end up doing the right thing.”³²⁴ He would like to students to interact with police officers in the school setting

³²⁰ Calhoun Testimony, *Wilmington Briefing*, p. 183.

³²¹ *Ibid.*, 180-183.

³²² *Ibid.*, 207-209.

³²³ *Ibid.*, 198-203.

³²⁴ *Ibid.*, 209.

to learn what to expect from police officers and to recruit students for law enforcement positions. He explained that it is very difficult to find men and women who qualify to be police officers, but “there are a lot of young faces out there that want to do what we do. It’s incumbent upon us to bring them up and teach them the right way. Implicit bias is very important. I think there’s a way for us to get around it—I don’t mean get around it, I mean teach each side what it means, when to apply it, and what it means to talk to each other and how we talk to each other.”³²⁵ He stressed, above all else, “it’s based on training. It’s based on reaching out to these kids at a young age.” Calhoun says it is very important for these kids to be familiar with police; that they are “not getting what they need sometimes in the homes,” and “these kids are looking for an authority figure. They are looking for someone to help them make decisions through life.”³²⁶

Lieutenant Calhoun also stated that law enforcement and communities in Delaware have a very good relationship. There have been several incidents that occurred in Delaware and they have not resulted in the kind of disruption that you see in other areas of the country.³²⁷ He acknowledged that some of the laws in Delaware need to be reviewed but disagreed that the laws should be changed so that people are not arrested. He added that law enforcement, the courts, and the Public Defender’s office keep statistics to track police officer conduct, re-offenders, and pedophiles.³²⁸ Lieutenant Calhoun stated that making arrests makes the community safe. Everything in the community needs to be addressed and referred to the broken window theory. When asked about his view on the disparities of arrests of black and brown people in comparison to whites, Lieutenant Calhoun suggested that more men of color are stopped in Wilmington than are stopped in southern Delaware because fewer men of color live there. He asserted that one has to look at the demographics and crime trends in the area. He explained that policing is computerized, and statistics are based on complaints received in a geographic area. These kinds of blanket accusations upset law enforcement because law enforcement makes sure that its statistics are accurate.³²⁹ Because the media makes these statements without support, Lieutenant Calhoun feels that social media has negatively impacted the ability of people to communicate with each other, and has, in turn, hindered community policing.³³⁰ Foot patrols are a positive aspect of community policing as they allow the officer and members of the community to establish a connection and build relationships. He cautions that youth must also participate in this approach.³³¹ He mentioned an attempt to reach out to a community church so that the youth could understand what it means to be a police officer and what to expect, using an interactive model that started in California with gang members.³³²

³²⁵ Ibid., 201.

³²⁶ Ibid., 239.

³²⁷ Ibid., 235-239.

³²⁸ Ibid., 218-220.

³²⁹ Ibid., 221-224.

³³⁰ Ibid., 203-205.

³³¹ Ibid., 203-205.

³³² Ibid., 198-203.

Captain Faheem Akil, *Wilmington Police Department, Delaware, & Member, Delaware National Organization of Black Enforcement Executives (NOBEL)*

Captain Akil stated that he is a veteran police officer with 33 years of experience. He recounted that, as a youth, his interactions with law enforcement were not positive, but overtime police officers changed his perspective. He said: “When we talk about policing in communities of color, it's about an opportunity for patience and interaction.”³³³ He stressed that transparency, accountability, and responsibility must come from both law enforcement and the community. He said that while there are those in the community who think they are not being treated fairly or with justice, there are also those in law enforcement who feel that they are part of the community and are trying to help, but their assistance is not being welcomed. He also remarked that it is not possible to fix the problem through arrests. He explained that a collaborative effort is needed, which includes social services, the educational system, and the whole community. He observed that many children do not respect any authority, whether it is the police or their parents.³³⁴

It is paramount for each individual in law enforcement and in the general public to self-evaluate their integrity and their internal moral compass. He acknowledged that all of us have implicit bias; the question is how to successfully transcend it.³³⁵ Captain Akil said there are a number of tests that a recruit must successfully complete to become an officer and one of them is a psychological test. It is possible that a psychological test may be able to reveal these unconscious emotions and implicit biases.³³⁶ Captain Akil explained that while he did not have any formal implicit bias training, he teaches cultural diversity and ethics at the academy, and explained how officers learn to look past social differences. He believes that this training is helpful and necessary, but “training is only as good as the individual that accepts it and wants to challenge himself or herself and apply that in their own character to bring it about.”³³⁷ “Every officer is a community police officer,” stated Captain Akil, explaining: “It’s not so much the enforcement part, but how you enforce it, and are you going to be ready to demean or demise when you’re in a position of leadership or power?”³³⁸

From his experience in a community policing unit, he observed that once they see the uniform, community members can be defensive. He believes that a consistent and respectful approach helps, but even with that approach, there are individuals who will not comply.³³⁹ Captain Akil added that an officer’s approach depends on the situation. A traffic stop or a situation on the street are not the times to debate the validity of the stop because Delaware law states that a citizen does not have the right to resist arrest, even for invalid reasons. Captain Akil advised that there are systems in place, such as the Office of Professional Standards and Internal Affairs, to deal with misconduct

³³³ Akil Testimony, *Wilmington Briefing*, p. 184.

³³⁴ *Ibid.*, 216-218.

³³⁵ *Ibid.*, 185.

³³⁶ *Ibid.*, 216-218.

³³⁷ *Ibid.*, 193.

³³⁸ *Ibid.*, 195.

³³⁹ *Ibid.*, 192-195.

or inappropriate incidents from cops. He recommends, especially at traffic stops, that the individual cooperate but document the incident and follow-up with the officer's supervisor or file a complaint immediately because police departments take these complaints very seriously. These are warning signs of stereotyping behaviors and they are tracked; in addition, officers are now equipped with body cameras which can improve accountability.³⁴⁰ If the officer is not correctly informed of the situation, standard training is triggered. He mentioned the Citizen's Police Academy which explained to the community members police officers' training, procedures, and mindset.³⁴¹

Corporal Joel Diaz, *Georgetown Police Department, Delaware*

Corporal Diaz stated that he is a 15-year veteran officer who was born in Puerto Rico and grew up in Chicago, Illinois. "Within law enforcement and the community," some of the key points of importance, he explains, "are a collaborative effort for the community as well as the police department to take ownership into what's been going on within the relationship as far as the community and law enforcement."³⁴² He supports a collaborative effort because it will build trust, but he mentioned that there is some resistance from the community toward law enforcement. This mutual respect, while important, is mainly the responsibility of law enforcement. Diaz feels that all police officers are community police officers and it is important to bridge the gap: "Connecting with people on a personal level so they see past the uniform, so we see past who or what we are instead of who we are as a person or as a professional, and the responsibility falls on [law enforcement] shoulders for the most part, but I think that we need to find that common ground."³⁴³

Corporal Diaz explained that training is only part of the equation; experience can be more beneficial than training. Diaz expressed: "A lot of that is our responsibility as far as law enforcement is concerned, whether it's training, whether it's exposing officers to some cultural differences, so they have an understanding as to the individuals they are dealing with."³⁴⁴

Exposing officers to the environments, cultures, and practices of the community can give them important insight: "Exposure is probably the number one training tool that I can think of that would be beneficial to this type of situation, exposing officers to those types of environments, those types of cultures, and giving them an insight as to why people do things the way they do. Why certain cultures have certain practices."³⁴⁵ He believes that scenario-based training is most effective. He also mentioned an effective community meeting at a middle school in which he gave the community an opportunity to express concerns. "Some of the questions were amazing, and some of the experiences were interesting in itself because they were very honest," he says; "We gave

³⁴⁰ Ibid., 229-232.

³⁴¹ Ibid., 214.

³⁴² Diaz Testimony, *Wilmington Briefing*, p. 187.

³⁴³ Ibid., 197-198.

³⁴⁴ Ibid., 187.

³⁴⁵ Ibid., 195-196.

them a forum, and sometimes we may not be giving people a forum to express these concerns and develop these types of relationships as far as training.”³⁴⁶

Corporal Diaz explained that in order to avoid non-compliance, he tries to diffuse the situation and tries to find a way to connect with the person. Traffic stops are the most dangerous contacts for police officers, so law enforcement needs to educate the public about what to do and what to expect when a police officer makes a traffic stop.³⁴⁷ Corporal Diaz added that, for officers, it is difficult to enter a chaotic situation with a relaxed approach. Police officers are trained to take control of a situation and to diffuse the turmoil. If an officer enters with an inappropriately relaxed approach, the chaotic situation can escalate and can be extremely dangerous for everyone. Once the chaotic situation is neutralized, a secondary approach can be utilized.³⁴⁸

³⁴⁶ Ibid., 197.

³⁴⁷ Ibid., 226-228.

³⁴⁸ Ibid., 212-213.

PANEL 5: Delaware Officials: What's Been Done and What's Still to be Done

Colonel Nathaniel McQueen, Jr., Superintendent, Delaware State Police

Colonel McQueen is the Superintendent of the Delaware State Police, an agency that has 716 sworn and about 300 civilian employees. The Department has about 40 units throughout the state that are regularly interacting with communities of color in different ways. He feels that the “national narrative” of poor relations and a lack of trust between communities of color and police is a challenge for law enforcement. McQueen said that law enforcement realized that those incidents happen, “but we realize that they are not happening at the frequency that they are sometimes portrayed.”³⁴⁹ The challenge is figuring out ways to get past these perceptions and work to build safe communities together. McQueen states that police agencies have to develop partnerships with communities and recognize that communities do not belong to the police, they belong to the people who live in them.

The State Police have developed and introduced many programs, but it is sometimes a challenge to get communities of color involved in those programs or to make sure they are even aware that they exist. Programs like the Citizen’s Police Academy have been around for years, but still do not have a good cross-section of folks that attend and can be ambassadors for the police and get the message out. It is important to communicate better and more proactively with the community. Contact should be made with the State Police Enhanced Analytical Response (SPEAR) to move to an evidence-based system of accountability to the citizens, commanders, and divisions. It is the way business is done as an organization.³⁵⁰

Colonel McQueen states that the Delaware State Police approach to combat the “national narrative” is to proactively reach out to the community; to be more involved with different programs; incorporate different groups. This proactive activity, he clarifies, “is not necessarily us stopping people with traffic stops or within the communities, it’s being proactive in terms of business place checks” or gaining intelligence from the community. He explains that the State Police have shifted the model to “trying to [solve] some of those long-term problems [by] working with our communities to do that.” He states: “What we bring in, you know, differs from the business community, education community, academic community, and [so we] partner with them to really give us some insight in terms of some of our programs, to expose them to come of the things that we do daily.”³⁵¹

McQueen explains that Delaware has done a great job in terms of sharing criminal justice information. It is one of the only states where all law enforcement information—including crime

³⁴⁹ McQueen Testimony, *Wilmington Briefing*, p. 49.

³⁵⁰ *Ibid.*, 254-255.

³⁵¹ *Ibid.*, 252-253

reports, traffic reports, traffic accidents—are on the same platform.³⁵² They are trying to make sure that “all agencies are engaged in intelligence sharing so that officers up and down the state are aware of the same information in vital.”³⁵³ The Computer-Aided Dispatch (CAD) system works “hand in hand with the three different corridors up and down the state;” as to technology as a whole, Delaware is certainly sharing best practices.³⁵⁴ Police “share and learn nationally and from our partners in other states,” and as a profession, law enforcement “has always been willing to change,” there just needs to be more attention on ways to implement best practices.³⁵⁵

Chief Vaughn Bond, *New Castle County Police, Delaware*

Chief Bond is the Chief of the New Castle County Police Department (NCCPD) and has worked for the organization since 1991. The NCCPD is a complete community policing organization of 400 officers. Chief Bond explained: “You start speaking to the Hispanic community, you start speaking to the Muslim community, you start speaking to the Indian community, you find out that many of them have the same concerns and the same fears that those in the African American community have.”³⁵⁶ He is focused on working to bridge this gap. McQueen explains that his focus is community outreach: “We want to observe, we want to listen, and we want to work. We want to work towards determining what the root causes of the issues are that are in the community, to improve the quality of life.”³⁵⁷ Chief Bond says that in order to build trust, police departments need to stop looking for traditional approaches. He suggests “going out and learning more about the cultures, the various cultures in our community.”³⁵⁸ Bond explains that at a recent community event, the State Police had a fantastic turn out: “It was a huge success. And those that were in attendance had an opportunity to see the police officers as we are, as human beings.”³⁵⁹

Another huge issue that Chief Bond witnesses is untreated mental illness. He explains: “There's a lot of discussion about the opioid addiction and the problems that are taking place, but one of the things that I think is not reported enough, and not talked about enough, is the impact that untreated mental illness has on our society and the problems that it presents for law enforcement.” Bond says that officers need training on how to handle mental health crises. He wants to ensure that “officers are able to interact during a crisis situation in a way that would not require us to use force.”³⁶⁰

Officers sometimes focus only on the criminal and on crime. They deal with so much negativity on a daily basis that, over time, their attitude changes—they become “sour” and biases set in; sometimes, their actions “follow suit, and [they] will find [themselves] and the police department in a world of trouble.” In law enforcement, many officers have a mindset of not wanting to share

³⁵² Ibid., 312.

³⁵³ Ibid., 312.

³⁵⁴ Ibid., 312-313.

³⁵⁵ Ibid., 313.

³⁵⁶ Bond Testimony, *Wilmington Briefing*, p. 259.

³⁵⁷ Ibid., 260.

³⁵⁸ Ibid., 262.

³⁵⁹ Ibid., 264.

³⁶⁰ Ibid., 261.

that they are burnt out; many times, they do not even recognize that they have a problem until complaints are filed against them. Chief Bond explains that the Delaware State Police have recognized that many of the officers' issues and problems come about as a result of being exposed to tragedy, carnage, and lack of respect humans have for each other on a daily basis; the implementation of a Critical Incident Stress Management (CISM) program is offered to officers because they have realized the toll these issues take. They also follow up with their officers—if an officer is involved in trauma, they will be seeing a psychologist and speaking with a CISM-trained officer. It is no longer an option.³⁶¹

Any complaint that comes in involving an officer is routed through internal affairs and professional standards. Chief Bond states that he is a firm believer in discipline, and discipline in the department means trust from the community. When an agency lacks discipline or fails to discipline officers who have committed wrongdoings, there is a setting up of a culture that makes it acceptable to disregard directives and policies and that should not be tolerated.³⁶²

Chief Marvin Mailey, *Dover Police, Delaware*

Chief Mailey explains that, despite what many believe, everyone has implicit biases—civilians, police, judges, juries, doctors, lawyers, politicians, and every other profession. The Dover Police Department's mission statement says that it will nurture public trust by holding its officers accountable to the highest standards of performance and ethics and will provide programs and services which will recognize the value of human life and resources; every year, Dover officers receive a version of cultural diversity training. In 2017, the department started a new version of this that not only challenged officers to have difficult conversations about bias, but to evaluate where they were in their careers and if they were fulfilling the reasons they originally wanted to become a police officer.³⁶³

Chief Mailey aims to build trust and diversity. The job of police department leaders is to “inspire and motivate others.” Mailey explains: “As Leader, my goal is to motivate my officers to get out of their cars, get to know the people in the community, to participate in our community outreach initiatives, and challenge them to make our city a better place to live, and change the conversation between officers and our citizens.”³⁶⁴ Over the last several years, explains Chief Mailey, the department has made significant improvements in its relationships with citizens, especially the African American community, through extensive outreach programs. The department received the NAACP President's Award for Change. Selling officers on participating in programs can be difficult because the job is extremely stressful; they often work 12-hour, or longer, shifts and are constantly helping people on their worst and most stressful days.³⁶⁵ “These interactions with the

³⁶¹ Ibid., 328-330.

³⁶² Ibid., 331-332.

³⁶³ Mailey Testimony, *Wilmington Briefing*, p. 267.

³⁶⁴ Ibid., 270-271.

³⁶⁵ Ibid., 270-271.

public not only build public trust, but they break down those unconscious barriers from implicit biases we all have,” states Mailey. He continues: “Our officers are able to meet and engage in meaningful dialogue with our diverse community in a low-stress setting.”³⁶⁶

Mailey explains that Dover’s recruiting begins very early on, with officers in middle schools and high schools, mentoring young people and being role models for the community they serve. Additionally, the department has a cadet program where it recruits college aged individuals to work part time in the department; they wear a uniform, they walk in the community, they enforce minor violations.³⁶⁷ This approach has been really successful because it allows for the agency to gain officers that show a talent and desire for the profession.

Chief Robert Tracy, *Wilmington Police, Delaware*

Chief Tracy explains that he started out with the New York City Police Department; spent time in the private sector; was second in command at the Chicago Police Department; and is now Chief of the Wilmington Police. He has experience being exposed to a lot of cities that have similar issues: implicit bias, community engagement, and lack of trust. Chief Tracy has been in policing in communities of color for 34 years. The City of Wilmington has 320 police officers and 80 civilian workers, so it is essential to go into the communities, go to community meetings, and get to know the communities. Almost 40 percent of the Wilmington Police Department’s manhours are spent waiting to answer calls for service, “so what are we doing in all that other time? Random patrol gets random results,” explains Tracy.³⁶⁸

Tracy explains that the Wilmington Police Department is forward-looking. He has met with clergy and will continue to meet quarterly with the faith-based community. “I think in policing technology sometimes wraps us around the axle,” says Tracy. He states: “We need to be thinking about models that engage the community and schools, and building relationships with local leaders [in the] community.”³⁶⁹ He states that some communities have no trust and they have never had it; there are also communities that have low trust, and some with above average trust. “First,” explains Tracy, departments need “to establish that trust, build on trust where we might have a little bit of trust, and then the ones that we do have trust—let’s maintain it and even try to make that better.”³⁷⁰ “If the first time you are speaking to the community and asking them for help is when something bad happens, that’s the wrong time to ask for their help,” explains Chief Tracy, continuing: “We have to build that trust, and with that trust the community will come along because they don’t want this violence either.”³⁷¹ The whole department has to adopt community policing as a philosophy. Chief Tracy explains: “not just specialists in community policing, it has to be the whole department

³⁶⁶ Ibid., 268.

³⁶⁷ Ibid., 333-334.

³⁶⁸ Tracy Testimony, *Wilmington Briefing*, p. 278.

³⁶⁹ Ibid., 309.

³⁷⁰ Ibid., 273.

³⁷¹ Ibid., 280-281.

and other departments.³⁷² Further, Tracy says that calls for service, response times—we are measured on these things, and we got away from real community policing.”³⁷³

Gun violence is very high on a national level; over 90-percent of all murders are by gunshot and over 90-percent of all victims are African Americans. Various interrupter models such as “Cure Violence” or “Cease Fire” have been tried in many cities but can fail and cause wedges between the police and communities if not implemented properly.³⁷⁴ To have long-term sustainability in reducing crime, Tracy says that transparency with the community is needed. The community can come together with the police only if they know what the police are doing, how they are doing it, and why.

Chief Tracy explains that departments need to teach procedural justice and implicit bias training in conjunction with consistently making sure that officers understand the importance of listening and showing respect and dignity toward the person.³⁷⁵ While this process may not always be deemed “implicit bias training,” this kind of approach has become a fairly widespread national practice. Tracy cited “train the trainers” models, which are aimed at achieving positive officer and department outcomes through better leadership.³⁷⁶ According to Chief Tracy, Meares, Tyler (Yale), & Kennedy (Harvard) who developed this curriculum, calling it *Procedural Justice and Police Legitimacy Training*, in a community in Chicago.³⁷⁷

When asked about how to measure the impact on violent crime and arrests of the Procedural Justice and Police Legitimacy trainings, he explained that some experts have used measurements such as ComStat and RespectStat (citizen surveys).³⁷⁸ Tracy referenced his experience in Chicago, explaining how, when a Chicago police officer would have a citizen encounter, the department would send out a survey within two weeks. The compliance rate with these surveys was between 10-15 percent. Tracy says that shootings, murders, and other crimes were reduced; clearance rates rose because the community was beginning to trust the police.³⁷⁹ Tracy stated that implementing the Citizen Satisfaction Survey³⁸⁰ may be possible to implement in Wilmington if, perhaps, the Criminal Justice Council would be willing to fund it.³⁸¹

³⁷² Ibid., 277.

³⁷³ Ibid., 307-308.

³⁷⁴ Ibid., 308-309

³⁷⁵ Ibid., 308-309

³⁷⁶ Ibid., 318-319.

³⁷⁷ Ibid., 319-320.

³⁷⁸ Ibid., 322-323.

³⁷⁹ Ibid., 322.

³⁸⁰ Ibid., 323.

³⁸¹ Ibid., 323.

Brendan O’Neill, Chief Defender, Office of Defense Services, Delaware

Mr. O’Neill is the Chief Defender of the Delaware Office of Defender Services, which includes both the Public Defender’s Office and the Office of Conflict Counsel. These offices are called upon to provide defense attorneys to people charged with crimes who cannot hire lawyers of their own choosing. As a whole, the lawyers in the Offices of Defender Services represent about 85 percent of the people charged with crimes in the state of Delaware. The criminal justice system is at its best when it is an adversarial process and authority is questioned. The system is not about guilt or innocence, nor is it about whether the accused did or did not do a particular act; rather it is about what can be proven. The primary goal of criminal defense lawyers is to protect rights of the accused.

When police interact with the public while they are investigating crimes, they are talking to people at the worst moments in their lives, so inevitably, the public trust is not always there. Moreover, the community’s confidence in the justice system is affected by the public’s perception of law enforcement. Mr. O’Neill says: “The public’s trust, our society’s concepts of law and order, and the community’s confidence in our criminal justice system are all affected by the public’s perception of law enforcement. Without a perception that police officers are fair and treating people in the community with respect, we are not going to have any confidence in our criminal justice system by the public, by the people who are supposed to be benefiting from the justice system.”³⁸²

One-way law enforcement might improve their relationship with minority communities is by ramping up their community policing, explains O’Neill. “I have never experienced a situation where there was explicit or expressed bias by the police [in] investigating the case or the prosecutor prosecuting it,”³⁸³ but implicit bias runs through the entire system. While he cannot state definitively a situation “in which there was an affirmative decision made to be harsher towards someone because that was a person of color, that doesn’t mean there aren’t value judgments.”³⁸⁴ Chief Defender O’Neill continues: “A big part of justice is that our community members believe they are getting a fair shake, and unless the people in the community have that belief, both the law enforcement community and the entire criminal justice system are going to be distrusted. When people feel that the police are out to get them, they don’t believe they can ever get justice. Their negative perceptions make it nearly impossible to believe the system will treat them fairly.”³⁸⁵ When there are reports of police unfairly victimizing people of color, the level of distress increases across all communities—including those where there have not been explicitly known incidents of abuse.

Community members want law enforcement officers to do their jobs, protect their community. Every member of the community has constitutionally protected rights. O’Neill says: “Community members don’t want law enforcement to violate their rights or to stereotype residents by race or

³⁸² O’Neill Testimony, *Wilmington Briefing*, p. 286.

³⁸³ *Ibid.*, 338.

³⁸⁴ *Ibid.*, 339.

³⁸⁵ *Ibid.*, 288.

by economic status.”³⁸⁶ He believes that everyone, police included, “need to dig deeper in dealing with individuals who come into contact with law enforcement and end up being in the criminal justice system.”³⁸⁷ There are many systematic issues that influence who is more at risk of becoming involved in the justice system; these aspects—such as poverty, inadequate schooling—should be considered and should orient the system toward a more client-centered approach.

Chief Defender O’Neill gives the hypothetical example of an 18-year old from the city of Wilmington who has a couple of misdemeanors and recently caught a case that might be defensible; the prosecutor is amenable to make a deal and so his lawyer might say, “I can get you a misdemeanor.” If it is a person of color that may sound like an attractive deal. Now say that that same lawyer is representing a white kid from the University of Delaware. The lawyer might go to the prosecutor and say, “hey don’t screw this kid, he is in college. The kid deserves a second chance.” So, he explains, there may be that there is a bias that fundamentally affects how the lawyer handles the case. “The forcefulness of the advocacy, the willingness to be inventive and creative and push the envelope. It may put the person of color at a disadvantage. The question is, are they getting an equal break?” O’Neill says that it may be implicit bias that causes that break to be different.³⁸⁸

Kathleen Jennings, Chief Administrative Officer & Public Safety Director, New Castle County, Delaware

Kathleen Jennings was a state prosecutor in charge of the Criminal Division as Chief Deputy Attorney General; she is now Chief Administrative Officer for New Castle County, as well as Acting Public Safety Director. She believes that her experience as a defense counsel, a prosecutor, and in public safety give her somewhat of a unique perspective. When she was Chief Prosecutor for the State of Delaware, there was a Crime Strategies Unit that would go out and meet with every leader of every community impacted by crime issues—even the highest crime neighborhoods—to get proximate to what was going on. “The whole purpose of the unit,” stated Jennings, “was to get into the neighborhoods and find out what was broken, because what we were also hearing is the community felt alone.”³⁸⁹ Through this process, Jennings learned that policing does not work when community members feel little-to-no connection to the law enforcement officers who patrolled their streets and their neighborhoods; these residents uniformly praised the presence of community police officers and wanted to get to know the police better.³⁹⁰ As the Crime Strategies Unit met with police and social service agencies to fix problems on the east side of Wilmington, crime started to go down.

Under the direction of the Chief Justice, explained Jennings, prosecutors have received a very truncated introductory class on implicit bias, less than a full day.³⁹¹ She believes there is a need to

³⁸⁶ Ibid., 288-289.

³⁸⁷ Ibid., 291.

³⁸⁸ Ibid., 339-341.

³⁸⁹ Jennings Testimony, *Wilmington Briefing*, p. 297.

³⁹⁰ Ibid., 294-295.

³⁹¹ Ibid., 311.

continue with more intensive training. Policing is not the only problem. “Some of this [issue] is the laws that the police have to enforce;” even laws where “enforce[ment] can result in a disproportionate impact in our communities.”³⁹²

Christian Kervick, MA, *Executive Director, Delaware Criminal Justice Council*

Mr. Kervick is the Executive Director of the Delaware Criminal Justice Council (CJC), which is situated in the executive branch of state government. Codified in Title 11 of the Delaware Code, the mission of the CJC is to continually strive for an effective criminal justice system that is fair, efficient and accountable. One of the responsibilities of the CJC is to administer funds from the U.S. Department of Justice’s Office of Justice Programs across Delaware. These funds—between 10- and 15-million annually—range from prevention to law enforcement initiatives, court programs, corrections, reentry, and others for juveniles. The CJC has partnered with the Delaware Police Chiefs Council to provide training in leadership, management, ethics, and decision making to more than 500 police officers representing every police department in the state through the FBI National LEEDA Program.³⁹³

“Being transparent with that data and working in collaboration with our partners and the community, this is how we are going to move the pendulum and begin to address our root issues and have a positive impact on law enforcement in the communities,” says Mr. Kervick. The Criminal Justice Council has begun this process by collecting and reporting on Disproportionate Minority Contact Data³⁹⁴ for juveniles in the system and has even begun collecting better data on disproportionate minority contact in the adult system—not only at the arrest stage, but throughout every decision point where discretion can be applied.³⁹⁵ Kervick read a quote: “Justice will not be served until those who are unaffected are as outraged as those who are.”³⁹⁶ He felt this quote was appropriate as he was interested, mainly, in discussing issues of fairness. Mr. Kervick states that the notion of implicit bias is not a new one and cannot be denied: “No criminal justice professional in this state can stand before you today and say that there is not a disproportionate number of minorities filtering in and out of the criminal justice system.”³⁹⁷ The CJC’s data further proves that those disparate numbers exist.³⁹⁸ That said, the data does not fully explain why; “Why are there more minorities arrested, detained, incarcerated in Delaware? These are the challenges that we face every day as we initiate these programs.”

Several times a year, the Criminal Justice Council holds public hearings in the community. They are held in community centers in some of our most crime-impacted neighborhoods and have proven quite effective. In every case, Mr. Kervick explains that the conversation turns to the community’s perception of law enforcement. “That perception is why I am glad to be here and

³⁹² *Ibid.*, 326.

³⁹³ Kervick Testimony, *Wilmington Briefing*, p. 302.

³⁹⁴ *See Appendices B.1 and B.2.*

³⁹⁵ Kervick Testimony, *Wilmington Briefing*, p. 304.

³⁹⁶ *Ibid.*, 299.

³⁹⁷ *Ibid.*, 301.

³⁹⁸ *See Appendix B.2.*

have an opportunity to speak. The issues that ring the loudest from some communities are those of distrust, dishonesty, racism, and biased decision-making.” These accusations, while often leveled at law enforcement, “are also pointed at judges, prosecutors, public defenders, and even corrections and probation officers.”³⁹⁹

The events in Baltimore, Ferguson, New York, and other communities as of late have been widely carried by news media and social media and many other outlets, “and rightfully so,” states Kervick. These kinds of events have a “dramatic negative impact on the perception of policing.” That said, they are also opportunities for police to become more transparent, more inclusive, and more committed to providing the safety that our communities deserve.” Further, he explained: “It’s our obligation to find new ways, better ways, and more effective ways of engaging our communities and making them part of the solution; if we are ever going to regain the confidence of our most challenged communities, we must do better as a system.”⁴⁰⁰ The criminal justice system is a “complex, imperfect, overtaxed, and under-funded set of solutions to some of the most difficult real-life problems that people will face,” says Mr. Kervick. Systematic issues—including access to adequate schools, sufficient employment opportunity, adequate housing—need to be examined as new ways of policing and improving public safety are developed.⁴⁰¹

³⁹⁹ Kervick Testimony, *Wilmington Briefing*, pp. 300-301.

⁴⁰⁰ *Ibid.*, 302-303.

⁴⁰¹ *Ibid.*, 303.

PUBLIC COMMENT SESSION

D. Marque Hall, *Author & Illustrator of “Black Lives Matter: A Comprehensive and Complex Coloring Book for Adults and Advanced Adolescents” and Youth Worker at the City of Wilmington Parks and Recreation Department*

D. Marque Hall has a criminal record and spent 10-months incarcerated. Hall expressed that a former NAACP initiative called the *Be the Change Committee* was formed in 2016 as a means to prevent a “Ferguson-like situation from happening” in Wilmington. The program “was the break program where community leaders would speak and act for the police that didn’t have a connection with the community, and for the community which has a connection with these people, these community leaders” who hold social capital.⁴⁰² He continued to further explain that he feels it is necessary for male “educated black leaders” teaching the subject matter that the youth feel connected to, because “when we do that, we are going to have a whole lot more success and a whole lot more positivity in our communities that right now we are not seeing that success.”⁴⁰³

Shyanne Miller, *Coalition to Dismantle the New Jim Crow*

First, she suggested “reconsidering what do we want police to be, and what are they supposed to be doing? And are we really asking for police to build a community that is safe and livable or are we just asking them to enforce the law?”⁴⁰⁴ Next, she indicated that the solution must move from just building trust with the community to actually establishing power within the community, suggesting that “policing efforts that establish community members in positions that have power and influence, those are the ways that we can start to actually build trust. And making sure that those community people that we do place in positions of power have an actual say in both holding the police accountable and holding community members accountable.”⁴⁰⁵ She said that community engagement is a lot more than solely building community trust, it has to include an empowering effort that looks at the police and the community as partners in keeping the community safe. Lastly, she said that the role of poverty, policies, racism, classism, and established policing practices must be considered in the approach to improve the situation. She stated that we have to challenge the implicit biases that suggest that people of color are committing more crimes than affluent white communities. She said: “today I heard a lot of blaming of families, and that's extremely insulting to hear from prominent members of our government and prominent members of our law enforcement entities talking about statements that really blame families for so-called not raising their children right. Frankly, those are racist statements, and they need to be re-evaluated.”⁴⁰⁶

⁴⁰² Hall Testimony, *Wilmington Briefing*, p. Page 345.

⁴⁰³ *Ibid.*, 349.

⁴⁰⁴ Miller Testimony, *Wilmington Briefing*, 350.

⁴⁰⁵ *Ibid.*, 350

⁴⁰⁶ *Ibid.*, 350-351.

Onesimus Al-Amin, *Student, University of Delaware in the Urban Development and Family Studies Department*

He stated that he is new to Delaware from Florida, and that he spent five years incarcerated starting at the age of seventeen for, partly, battery with a law enforcement officer. He stated that he noticed a lack of representation on the panels from two specific populations: (1) “youth who are experiencing those problems with the police on a weekly basis, some of them, or youth who have been involved or who are currently involved in the juvenile justice system,”⁴⁰⁷ and (2) the Hispanic community, which is “the largest growing minority population in America.”⁴⁰⁸ Al-Amin also stated that he is concerned that the FBI does not release crime statistics on white collar crimes committed, because that means that “only crimes committed by poor people are being highlighted in the news.”⁴⁰⁹

Ashley Scrivner, *Law Student, Widener University Delaware Law School*

She addressed communication issues existing between community members and police. She said that for officers to “communicate with people in distress in a way that makes them feel as though you are being compassionate, communicating as a friend, or as someone there to help can be difficult when you work in a profession that requires a level of professionalism or a lingo.”⁴¹⁰ She suggested that more training should be focused on communicating in ways that make officers appear more engaged and less aloof could make police more accessible to the community for communication.

⁴⁰⁷ Al-Amin Testimony, *Wilmington Briefing*, p. 352.

⁴⁰⁸ *Ibid.*, 353.

⁴⁰⁹ *Ibid.*, 353.

⁴¹⁰ Scrivner Testimony, *Wilmington Briefing*, p. 355.

Provided by the Delaware Criminal Justice Council (CJC) on November 13, 2017

RE: Explanation of Relative Rate Index (RRI) DMC – Disproportionate Minority Contact Reports for: 2011, 2012, 2013, 2014, and 2015.

Source OJJDP: <https://www.ojjdp.gov/ojstatbb/dmcdm/asp/whatis.asp>

As outlined in OJJDP's Disproportionate Contact Technical Assistance Manual, the first decision point that should be assessed with an RRI Matrix is the arrest decision. Prior to August 2017, the "by race" tables shown in the National DMC Databook included this decision point. With the inclusion of national estimates of delinquency cases involving Hispanic youth, the race groups represented by the arrest data no longer align with the race/ethnicity groups in the delinquency case data. Therefore, the arrest decision point has been removed from the "by race/ethnicity" tables. Referral rates shown in the "by race/ethnicity" section are now calculated by dividing referrals by the youth population (rather than by arrests).

At its simplest, the RRI is a means of comparing the rates of juvenile justice contact experienced by different groups of youth. Let's consider an example based on the "by race/ethnicity" DMC Matrix. In this table, referral to court is the first decision point assessed. For this decision point, the RRI compares the referral rate for white youth with the referral rate for all racial minorities as a group (and for each racial minority group individually). To calculate a referral rate (or any rate), you need a numerator and a denominator. The referral rate for a racial group uses a measure of the number of court referrals in a year as the numerator and a measure of population as the denominator. Many referral counts could be used depending on the process that one wishes to study (e.g., all referrals, violent crime referrals, drug referrals). Let's assume we want to study the juvenile justice system's handling of all delinquency matters as a whole, so we must find a count of all delinquency referrals for each racial subgroup we wish to study. For our work we used for the numerator delinquency case estimates developed by the National Center for Juvenile Justice which are based on data reported to the National Juvenile Court Data Archive. These estimates include the annual number of delinquency cases handled in juvenile court for the following racial groups: (1) White, (2) Black or African American, (3) American Indian and Alaskan Native, (4) Asian/Native Hawaiian/Other Pacific Islander, and (5) Hispanic.

Next we need to determine what to use as a denominator. At times, what we want and what is available may not be the same. The production of an RRI or the RRI Matrix is always limited by the quality of available data. While it is recommended that referral rates should be calculated based on arrests, we know that the race groups available in the national arrest data do not match those found in the court data. While the arrest counts are the preferred denominator for the referral rate in the RRI matrix, it is important to use as a denominator a relevant preceding decision point with compatible race groups. With no arrest step, the denominator for the referral rate is population estimates from the National Center for Health Statistics within the Centers for Disease Control and Prevention available in *Easy Access to Juvenile Populations* (<http://www.ojjdp.gov/ojstatbb/ezapop/>). Since the population and delinquency data share the same race/ethnicity groups, we can proceed with creating a referral rate. Before we proceed, we need to determine what age range to use? The court data captures all cases under juvenile court jurisdiction.

As very few delinquency cases involve youth younger than the age of 10, we decided to use as a population base the number of youth age 10 through the upper age of juvenile court jurisdiction in each state.

So now we can calculate the referral rates. For simplicity, let's talk about only two: the referral rate for white juveniles and for black juveniles. By dividing their counts of delinquency referrals in 2014 by their age 10 through upper age population in 2014, we find the white referral rate was 24.1 delinquency referrals for every 1,000 white persons ages 10–upper age in the U.S. population, and the black referral rate was 75.1. The Relative Rate Index for court referral is simply the black rate relative to (divided by) the white rate, yielding an RRI of 3.1. This means that the black referral rate in 2014 was more than triple the white rate, documenting a racial disparity at referral. Does this imply a racial bias in the referral process? Not necessarily. There could be many reasons other than racial bias that produced this racial disparity (e.g., different levels of delinquency behavior by white juveniles and black juveniles, differential responses by law enforcement and/or juvenile court decision makers.). All the RRI can say is that disparity exists and additional exploration is needed to determine the source of the bias.

State : Delaware

County : Statewide

Reporting Period 1/1/2011

through 12/31/2011

Juvenile Justice Rates								
	White	Black or African-American	Hispanic or Latino	Asian	Native Hawaiian or other Pacific Islanders	American Indian or Alaska Native	Other/Mixed	All Minorities
2. Juvenile Arrests	40.7	109.9		7.8		2.4		97.3
3. Refer to Juvenile Court	100.0	100.0		100.0		100.0		100.0
4. Cases Diverted	22.3	14.5		37.5				14.7
5. Cases Involving Secure Detention	12.5	25.1		8.3				25.0
6. Cases Petitioned	100.0	100.0		100.0		100.0		100.0
7. Cases Resulting in Delinquent Findings	21.8	26.5		25.0		100.0		26.6
8. Cases resulting in Probation Placement	94.8	90.6		66.7		200.0		90.6
9. Cases Resulting in Confinement in Secure Juvenile Correctional Facilities	4.2	10.7		16.7				10.7
10. Cases Transferred to Adult Court	0.6	2.1						2.0

Relative Rate Index Compared with : White								
	White	Black or African-American	Hispanic or Latino	Asian	Native Hawaiian or other Pacific Islanders	American Indian or Alaska Native	Other/Mixed	All Minorities
2. Juvenile Arrests	1.00	2.70	*	0.19	*	*	*	2.39
3. Refer to Juvenile Court	1.00	1.00	*	**	*	*	*	1.00
4. Cases Diverted	1.00	0.65	*	**	*	*	*	0.66
5. Cases Involving Secure Detention	1.00	2.00	*	**	*	*	*	1.99
6. Cases Petitioned	1.00	1.00	*	**	*	*	*	1.00
7. Cases Resulting in Delinquent Findings	1.00	1.22	*	**	*	*	*	1.22
8. Cases resulting in Probation Placement	1.00	0.96	*	**	*	*	*	0.96
9. Cases Resulting in Confinement in Secure Juvenile Correctional Facilities	1.00	2.57	*	**	*	*	*	2.58
10. Cases Transferred to Adult Court	1.00	3.72	*	**	*	*	*	3.69
Group meets 1% threshold?	Yes	Yes	No	Yes	No	No	No	

Key:

Statistically significant results:

Results that are not statistically significant

Group is less than 1% of the youth population

Insufficient number of cases for analysis

Missing data for some element of calculation

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What Would it Take?

Assuming all else remained constant, what changes in volume for minority youth required to achieve statistical parity with

White

Note: results are only displayed if the corresponding RRI value is statistically significant	White	Black or African-American	Hispanic or Latino	Asian	Native Hawaiian or other Pacific Islanders	American Indian or Alaska Native	Other/Mixed	All Minorities
	2. Juvenile Arrests		-1935		102		31	
3. Refer to Juvenile Court								
4. Cases Diverted		241		-4				238
5. Cases Involving Secure Detention		-386		1				-385
6. Cases Petitioned								
7. Cases Resulting in Delinquent Findings		-145		-1		-2		-148
8. Cases resulting in Probation Placement		34		2		-2		34
9. Cases Resulting in Confinement in Secure Juvenile Correctional Facilities		-53		-1				-54
10. Cases Transferred to Adult Court		-46						-46

release date: March, 2011

State : Delaware

County : Statewide

Reporting Period 1/1/2012

through 12/31/2012

Juvenile Justice Rates								
	White	Black or African-American	Hispanic or Latino	Asian	Native Hawaiian or other Pacific Islanders	American Indian or Alaska Native	Other/Mixed	All Minorities
2. Juvenile Arrests	37.9	103.1		7.9		6.5		90.7
3. Refer to Juvenile Court	100.0	100.0		100.0		100.0		100.0
4. Cases Diverted	28.9	20.0						19.8
5. Cases Involving Secure Detention	12.5	26.5						26.2
6. Cases Petitioned	100.0	100.0		100.0		100.0		100.0
7. Cases Resulting in Delinquent Findings	26.5	30.1		30.8		40.0		30.2
8. Cases resulting in Probation Placement	107.9	98.8		100.0		200.0		99.1
9. Cases Resulting in Confinement in Secure Juvenile Correctional Facilities	3.0	8.8						8.7
10. Cases Transferred to Adult Court	0.3	1.9						1.9

Relative Rate Index Compared with : White								
	White	Black or African-American	Hispanic or Latino	Asian	Native Hawaiian or other Pacific Islanders	American Indian or Alaska Native	Other/Mixed	All Minorities
2. Juvenile Arrests	1.00	2.72	*	0.21	*	*	*	2.39
3. Refer to Juvenile Court	1.00	1.00	*	**	*	*	*	1.00
4. Cases Diverted	1.00	0.69	*	**	*	*	*	0.69
5. Cases Involving Secure Detention	1.00	2.12	*	**	*	*	*	2.10
6. Cases Petitioned	1.00	1.00	*	**	*	*	*	1.00
7. Cases Resulting in Delinquent Findings	1.00	1.14	*	**	*	*	*	1.14
8. Cases resulting in Probation Placement	1.00	0.92	*	**	*	*	*	0.92
9. Cases Resulting in Confinement in Secure Juvenile Correctional Facilities	1.00	2.98	*	**	*	*	*	2.95
10. Cases Transferred to Adult Court	1.00	5.47	*	**	*	*	*	5.41
Group meets 1% threshold?	Yes	Yes	No	Yes	No	No	No	

Key:

Statistically significant results:

Results that are not statistically significant

Group is less than 1% of the youth population

Insufficient number of cases for analysis

Missing data for some element of calculation

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What Would it Take?								
Assuming all else remained constant, what changes in volume for minority youth required to achieve statistical parity with							White	
Note: results are only displayed if the corresponding RRI value is statistically significant	White	Black or African-American	Hispanic or Latino	Asian	Native Hawaiian or other Pacific Islanders	American Indian or Alaska Native	Other/Mixed	All Minorities
		-1767		99		24		-1644
		247		8		1		256
		-391		3		1		-387
		-102		-1		-1		-104
		76		1		-2		75
		-49						-49
		-43						-43

release date: March, 2011

State : Delaware

County : Statewide

Reporting Period 1/1/2013

through 12/31/2013

Juvenile Justice Rates								
	White	Black or African-American	Hispanic or Latino	Asian	Native Hawaiian or other Pacific Islanders	American Indian or Alaska Native	Other/Mixed	All Minorities
2. Juvenile Arrests	33.4	101.0		4.6		9.2		88.0
3. Refer to Juvenile Court	100.0	100.0		100.0		100.0		100.0
4. Cases Diverted	20.5	13.7		18.8		28.6		13.8
5. Cases Involving Secure Detention	14.3	24.7		25.0		14.3		24.7
6. Cases Petitioned	100.0	100.0		100.0		100.0		100.0
7. Cases Resulting in Delinquent Findings	24.7	30.2		50.0		57.1		30.4
8. Cases resulting in Probation Placement	93.3	89.6		37.5		25.0		88.8
9. Cases Resulting in Confinement in Secure Juvenile Correctional Facilities	4.1	5.8						5.7
10. Cases Transferred to Adult Court	0.7	1.1		6.3				1.2

Relative Rate Index Compared with : White								
	White	Black or African-American	Hispanic or Latino	Asian	Native Hawaiian or other Pacific Islanders	American Indian or Alaska Native	Other/Mixed	All Minorities
2. Juvenile Arrests	1.00	3.03	*	0.14	*	*	*	2.64
3. Refer to Juvenile Court	1.00	1.00	*	**	*	*	*	1.00
4. Cases Diverted	1.00	0.67	*	**	*	*	*	0.67
5. Cases Involving Secure Detention	1.00	1.73	*	**	*	*	*	1.73
6. Cases Petitioned	1.00	1.00	*	**	*	*	*	1.00
7. Cases Resulting in Delinquent Findings	1.00	1.22	*	**	*	*	*	1.23
8. Cases resulting in Probation Placement	1.00	0.96	*	**	*	*	*	0.95
9. Cases Resulting in Confinement in Secure	1.00	1.43	*	**	*	*	*	1.41
10. Cases Transferred to Adult Court	1.00	1.61	*	**	*	*	*	1.65
Group meets 1% threshold?	Yes	Yes	No	Yes	No	No	No	

Key:

Statistically significant results:

Results that are not statistically significant

Group is less than 1% of the youth population

Insufficient number of cases for analysis

Missing data for some element of calculation

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What Would it Take?								
Assuming all else remained constant, what changes in volume for minority youth required to achieve statistical parity with								White
Note: results are only displayed if the corresponding RRI value is statistically significant	White	Black or African-American	Hispanic or Latino	Asian	Native Hawaiian or other Pacific Islanders	American Indian or Alaska Native	Other/Mixed	All Minorities
			-1837		101		18	
		185				-1		185
		-287		-2				-289
		-149		-4		-2		-155
		31		5		3		38
		-14						-14
		-12		-1				-13

release date: March, 2011

State : Delaware

County : Statewide

Reporting Period 1/1/2014

through 12/31/2014

Juvenile Justice Rates								
	White	Black or African-American	Hispanic or Latino	Asian	Native Hawaiian or other Pacific Islanders	American Indian or Alaska Native	Other/Mixed	All Minorities
2. Juvenile Arrests	26.4	101.9		5.7				89.1
3. Refer to Juvenile Court	100.0	100.0		100.0				100.0
4. Cases Diverted	38.6	21.6						21.5
5. Cases Involving Secure Detention	0.8	2.5						2.5
6. Cases Petitioned	100.0	100.0		100.0				100.0
7. Cases Resulting in Delinquent Findings	17.7	21.8		25.0				21.9
8. Cases resulting in Probation Placement	114.1	82.3		80.0				82.2
9. Cases Resulting in Confinement in Secure Juvenile Correctional Facilities	88.1	134.1						133.0
10. Cases Transferred to Adult Court	0.7	1.1						1.1

Relative Rate Index Compared with : White								
	White	Black or African-American	Hispanic or Latino	Asian	Native Hawaiian or other Pacific Islanders	American Indian or Alaska Native	Other/Mixed	All Minorities
2. Juvenile Arrests	1.00	3.87	*	0.22	*	*	*	3.38
3. Refer to Juvenile Court	1.00	1.00	*	**	*	*	*	1.00
4. Cases Diverted	1.00	0.56	*	**	*	*	*	0.56
5. Cases Involving Secure Detention	1.00	3.21	*	**	*	*	*	3.19
6. Cases Petitioned	1.00	1.00	*	**	*	*	*	1.00
7. Cases Resulting in Delinquent Findings	1.00	1.23	*	**	*	*	*	1.23
8. Cases resulting in Probation Placement	1.00	0.72	*	**	*	*	*	0.72
9. Cases Resulting in Confinement in Secure Juvenile Correctional Facilities	1.00	1.52	*	**	*	*	*	1.51
10. Cases Transferred to Adult Court	1.00	1.57	*	**	*	*	*	1.56
Group meets 1% threshold?	Yes	Yes	No	Yes	No	No	No	

Key:

Statistically significant results:

Results that are not statistically significant

Group is less than 1% of the youth population

Insufficient number of cases for analysis

Missing data for some element of calculation

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Regular font

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**

What Would it Take?								
Assuming all else remained constant, what changes in volume for minority youth required to achieve statistical parity with							White	
Note: results are only displayed if the corresponding RRI value is statistically significant	White	Black or African-American	Hispanic or Latino	Asian	Native Hawaiian or other Pacific Islanders	American Indian or Alaska Native	Other/Mixed	All Minorities
			-2010		72			15
		461		8				469
		-46						-46
		-111		-1				-112
		188		2				190
		-272		4				-268
		-11						-11

release date: March, 2011

State : Delaware

County : Statewide

Reporting Period 1/1/2015

through 12/31/2015

Juvenile Justice Rates								
	White	Black or African-American	Hispanic or Latino	Asian	Native Hawaiian or other Pacific Islanders	American Indian or Alaska Native	Other/ Mixed	All Minorities
2. Juvenile Arrests	22.0	91.9		2.9				79.2
3. Refer to Juvenile Court	100.0	100.0		100.0				100.0
4. Cases Diverted	26.9	14.3		72.7				14.5
5. Cases Involving Secure Detention	16.5	29.7						29.8
6. Cases Petitioned	100.0	100.0		100.0				100.0
7. Cases Resulting in Delinquent Findings	15.5	19.2		18.2				19.2
8. Cases resulting in Probation Placement	86.5	54.8		50.0				54.7
9. Cases Resulting in Confinement in Secure Juvenile Correctional Facilities	7.2	11.3						11.3
10. Cases Transferred to Adult Court	0.3	1.3						1.3

Relative Rate Index Compared with : White								
	White	Black or African-American	Hispanic or Latino	Asian	Native Hawaiian or other Pacific Islanders	American Indian or Alaska Native	Other/ Mixed	All Minorities
2. Juvenile Arrests	1.00	4.17	*	0.13	*	*	*	3.60
3. Refer to Juvenile Court	1.00	1.00	*	**	*	*	*	1.00
4. Cases Diverted	1.00	0.53	*	**	*	*	*	0.54
5. Cases Involving Secure Detention	1.00	1.81	*	**	*	*	*	1.81
6. Cases Petitioned	1.00	1.00	*	**	*	*	*	1.00
7. Cases Resulting in Delinquent Findings	1.00	1.24	*	**	*	*	*	1.24
8. Cases resulting in Probation Placement	1.00	0.63	*	**	*	*	*	0.63
9. Cases Resulting in Confinement in Secure Juvenile Correctional Facilities	1.00	1.57	*	**	*	*	*	1.56
10. Cases Transferred to Adult Court	**	**	*	**	*	*	*	**
Group meets 1% threshold?	Yes	Yes	No	Yes	No	No	No	

Key:

Statistically significant results:

Results that are not statistically significant

Group is less than 1% of the youth population

Insufficient number of cases for analysis

Missing data for some element of calculation

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What Would it Take?								
Assuming all else remained constant, what changes in volume for minority youth required to achieve statistical parity with							White	
Note: results are only displayed if the corresponding RRI value is statistically significant	White	Black or African-American	Hispanic or Latino	Asian	Native Hawaiian or other Pacific Islanders	American Indian or Alaska Native	Other/ Mixed	All Minorities
	2. Juvenile Arrests		-1998		73	3	18	
3. Refer to Juvenile Court								
4. Cases Diverted		331		-5				326
5. Cases Involving Secure Detention		-348		2	-3	-1		-350
6. Cases Petitioned								
7. Cases Resulting in Delinquent Findings		-97						-97
8. Cases resulting in Probation Placement		160		1				161
9. Cases Resulting in Confinement in Secure Juvenile Correctional Facilities		-21						-20
10. Cases Transferred to Adult Court		-25						-25

release date: March, 2011

TOP-LINE REPORT

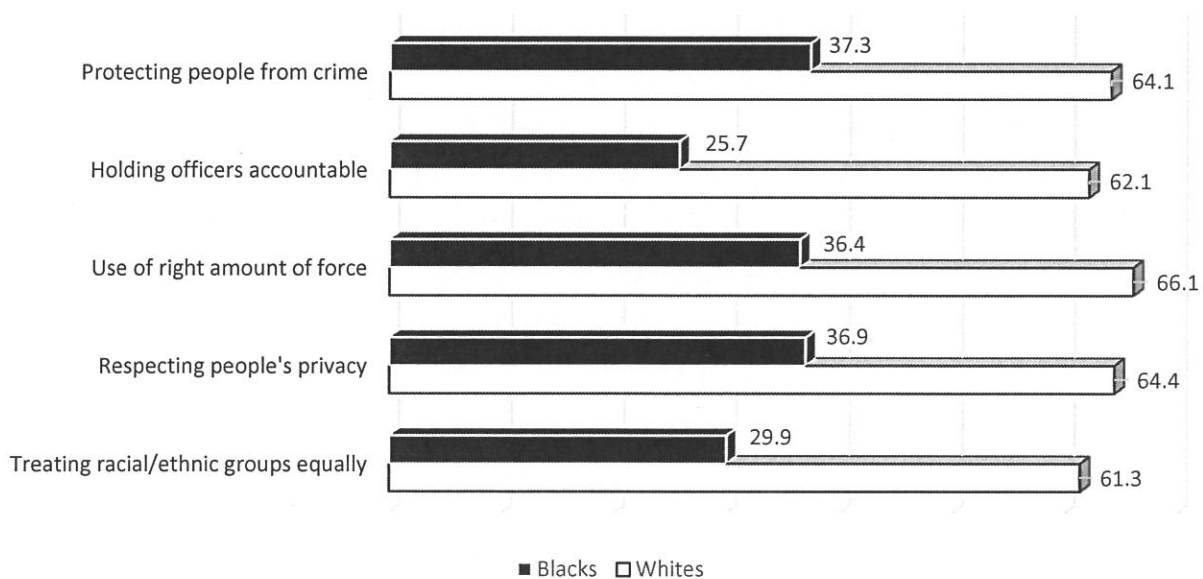
Race and Perceptions of Policing in Delaware

Police actions have traditionally been the catalyst for sparking civil unrest and unifying the Black community. The “Black Lives Matter” actually got its start because of the death of several Blacks at the hands of the police and uncertain outcomes in the criminal justice system.

The summer of July 2016 saw Black males die needlessly at the hands of police in Baton Rouge, Louisiana, and St. Paul, Minnesota. During the same week, a killed five police officers and wounded seven who were working at a peaceful Black Lives Matter rally in Dallas, Texas. A week later, three police officers were ambushed and killed and another three wounded in Baton Rouge, Louisiana. In both cases, the assailants were Black males who deliberately targeted police officers.

Blacks’ negative perceptions of police tend to be consistent across the nation, and Delaware is no exception, according to the 2014 Delaware Politics Survey. Differences in Blacks’ and Whites’ opinions of police departments in Delaware is like “day and night.” As shown in Figure 1, only 37.3 percent of Black Delawareans felt that police departments in the state were doing a favorable job protecting people from crime. On the other hand, the approval rating of the job Delaware police departments were doing protecting the public among Whites was as high as 64.1 percent.

FIGURE 1: HAVE FAVORABLE OR POSITIVE PERCEPTION OF POLICE DEPARTMENTS IN DELAWARE WHEN IT COMES TO:



Regarding the holding of police officers accountable when misconduct occurred, 19.2 percent of Whites in the state felt police departments were doing an excellent job. Another 42.9 percent of Whites felt that police departments were doing a good job. Whereas, only 5.9 percent of Black Delawareans felt police departments in the state were doing an excellent job holding officers accountable for misconduct. No more than 19.8 percent of Blacks' felt the local departments were doing a good job holding police accountable.

Only 36.4 percent of Black Delawareans felt that the police in the state used the right amount of force for each situation, compared to 66.1 percent of White Delawareans. Similarly, only 36.9 percent of Black Delawareans felt police departments in the state did a satisfactory job respecting people's privacy, compared to 64.4 percent of Whites.

Nineteen-point-seven percent of White Delawareans felt that police in Delaware treated racial and ethnic groups equally. Another 41.6 percent felt they did a good job treating everyone fairly. Among Blacks, only 11 percent felt police departments in Delaware did an excellent job treating racial and ethnic groups equally. Less than one-fifth of Blacks, 18.9 percent, believed local police departments did a good job treating everyone fairly.

When attitudes among Blacks were examined based on where they lived, we found significant differences in perceptions among those who lived in urban areas and those who lived in suburban/rural areas.

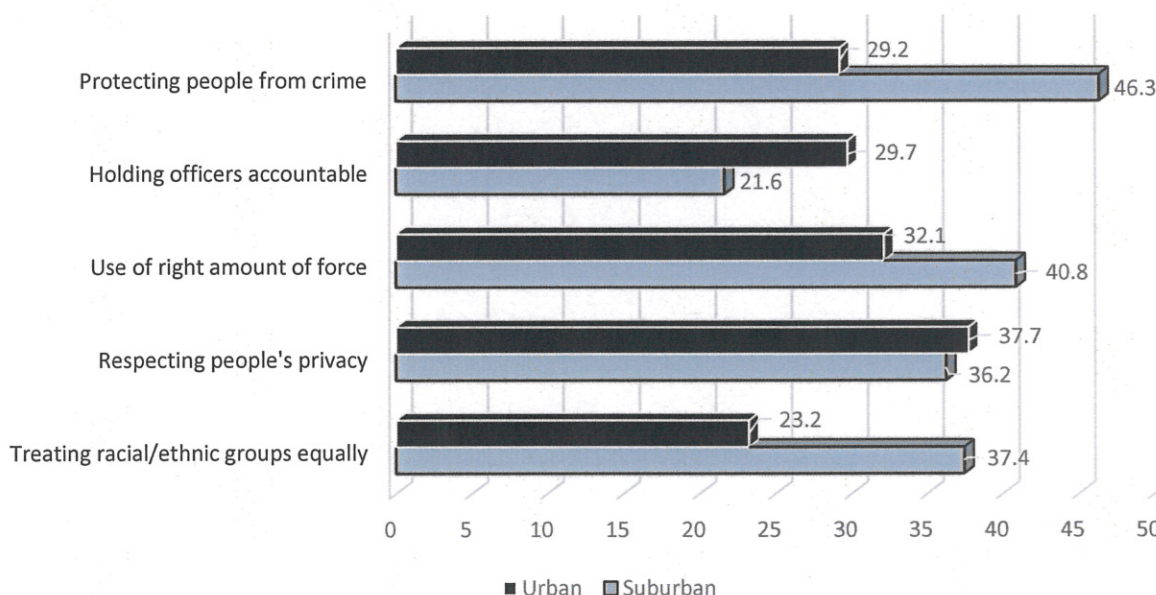
Blacks' did not differ based on residency in their perceptions when it came to matters regarding police respect for people's privacy. As shown in Figure 2, approximately 37 percent of Blacks living in urban and suburban/rural areas felt police departments in Delaware showed little respect for people's privacy.¹

However, these two groups of Black respondents differed significantly in their perceptions of police departments' use of force and holding officers accountable. Forty-point-eight percent of those Blacks who lived in suburban/rural areas felt police departments in Delaware used the right amount of force for each situation. However, only 32.1 percent of those Blacks who lived in an urban area concurred.

Twenty-one-point-six percent of urban Blacks compared to 29.7 percent of suburban/rural Blacks felt police departments in the state did a good job holding officers accountable when misconduct occurred. Perhaps this was the case because police misconduct is more likely to come to the attention of the public in urban areas than suburban/rural areas.

¹ For purposes, here suburban and rural respondents were grouped into two categories based on the zip code in which they lived. If the Blacks were greater than 30 percent of the zip code's population, it was grouped into one category and less than 30 in the other. As it turned out the zip codes with large Black populations were located in Dover, New Castle City, and Wilmington. The zip codes in this group included: 19703, 19720, 19801, 19802, 19805, 19901, 19904 and 19941.

Figure 2: Favorable/positive perceptions of police departments in Delaware among Blacks living in suburban and urban zip codes



Urban and suburban/rural Blacks also differed significantly in their perceptions of police treatment of racial and ethnic groups. Similarly, they differed significantly in their perceptions of police protecting the public from crime. Thirty-seven-point-four percent of the suburban/rural Blacks felt that police departments in Delaware treated racial and ethnic groups equally compared to 23.3 percent of urban Blacks.

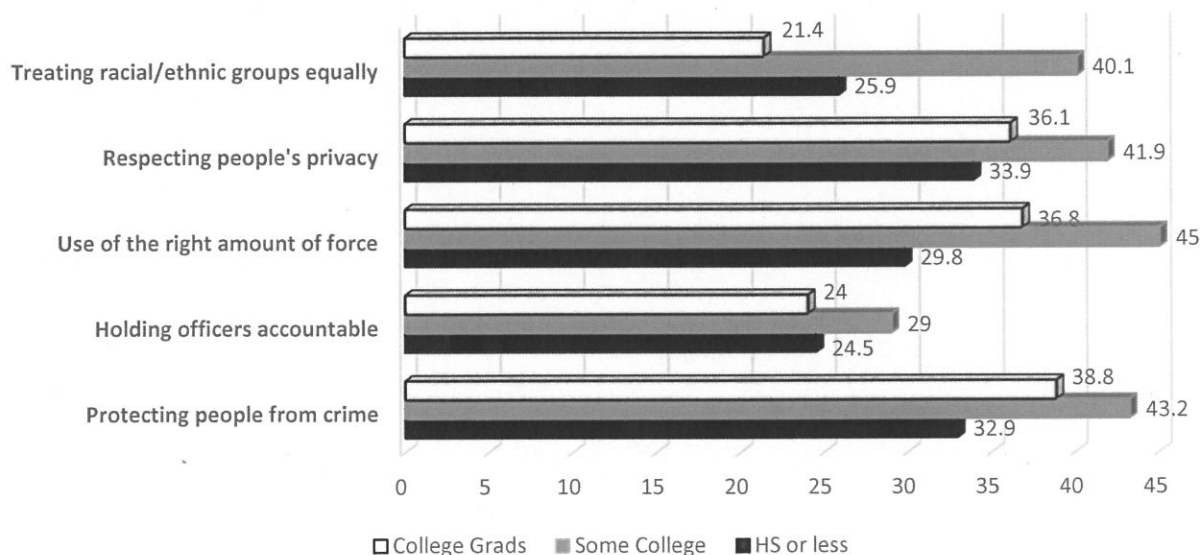
Likewise, on the issues of police protecting the public from crime, 46.3 percent of Black respondents who lived in suburban/rural zip codes had a favorable perception of Delaware police departments' protecting people from crime when compared to only 29.2 percent of Blacks who lived in urban areas.

Another important measure of differences in perceptions of police in the state would be along educational lines. The data showed no significant difference among Blacks' along educational lines when it came to perceptions regarding police respect for privacy, police being held accountable when misconduct occurred, and police protecting people from crime.

On the other hand, Blacks differed significantly along educational lines in their perceptions of Delaware's police departments on the remaining two issues, as shown in Figure 3. Twenty-five-point-nine percent of Blacks with a high school diploma or less and 21.4 percent of Black college graduates felt police departments in Delaware did a favorable job of treating racial and ethnic groups equally. However, 40.1 percent of the Black population with some college education felt police departments' treatment of racial

and ethnic groups was good or excellent.

Figure 3: Favorable/positive perceptions of police departments in Delaware among Blacks based on level of education



A significantly smaller proportion of Blacks with a high school diploma or less (29.8 percent) felt the amount of force that was often used by police departments in Delaware was appropriate. Roughly 40 percent of college-educated Blacks and 45 percent of Blacks with some education felt that police departments in Delaware often used the right amount of force for each situation.

So, in conclusion, the study found that in 2014, Blacks and Whites differed significantly in their perceptions of the job police departments were doing in Delaware. Blacks tended to have a negative and more pessimistic view of police departments in Delaware when compared to Whites. There were differences in perception among Blacks regarding the job the police were doing in Delaware; however, the strength of the differences was marginally weak at best when compared to the differences along racial lines.

About the study

The “Delaware Politics Survey: 2014” was a project of the University of Delaware’s Center for Political Communication (CPC). Results are based on telephone interviews with a representative sample of 900 adult Delaware residents. Telephone interviews

were conducted via landline (n=450) and cell phone (n=450). The data were collected from September 10-22, 2014. Statistical results are weighted to correct known demographic discrepancies. The margin of sampling error for the complete set of weighted data is \pm three percentage points.

The author of this topline report was Dr. Theodore J. Davis, Jr. Dr. Davis is a faculty member in the Department of Political Science and International Relations at the University of Delaware. He can be reached directly at teddavis@udel.edu or phoned at 302.831.8580. The interpretation and conclusions are those of Dr. Davis.

ADDITIONAL STATEMENT

Submitted to the Delaware State Advisory Committee (i.e., the Committee) to the U.S. Commission on Civil Rights (i.e., the Commission)

Authored by David C. Wilson, PhD
 Associate Dean for Social Sciences, College of Arts & Sciences
 Professor of Political Science & International Relations and Psychological & Brain Sciences
 University of Delaware

I was pleased to provide remarks to the Committee, and hope our discussion was useful and helped to advance an understanding of implicit biases. I am submitting these additional comments to elaborate on some points made during the hearing.

The Concept of Implicit Bias

By definition, implicit biases are preferences for or against any social phenomena including groups, identities, individuals, institutions, laws or norms, or other matters that have a political outcome. Most people do not have implicit biases for or against non-political things like obscure planets in the galaxy, different types of pasta, or page numbers at the top or bottom of a printed page; those are not political in the sense that they do not determine social status, privilege, power, or resources.

People have implicit biases toward things where they have developed an attitude (a sentiment ranging from like to dislike). If one likes their alma mater over a rival school, they are very likely to have an “explicit” bias toward their school (and against the other school). These are natural connections that flow from human evolutionary traits for survival: we need to recognize friend from foe, and our brains operate faster than our conscious to speed up our decision making process.

How Implicit Biases Work

Implicit biases are unique because they operate outside of one’s awareness. It is impossible to NOT HAVE implicit biases; they are a nature part of human behavior and is subject to their implicit influences. One cannot train-away implicit biases or force people to not use them. This is because they are ...implicit. They surface unconsciously and without warning. The key is for people to accept this fact, and come to terms with the fundamentals of psychological science: we are motivated to think more positively about ourselves because it puts us in a positive state. Thinking negatively about ourselves is uncomfortable, and produces stress (being less competent than others), anxiety (being wrong), and despair (being helpless). Thus, humans are motivated toward a positive view of themselves which requires them to justify their judgments and decisions, even when they are socially unacceptable.

For example, many people justify the use of excessive force by reasoning that the recipients must have done something wrong to deserve it. And, even when evidence shows the counter (e.g., a recipient received undeserved excessive force), people may justify their earlier belief as “usually correct.” The willingness to dismiss evidence in favor of positive view of one’s existing beliefs is one of the dangerous consequences of implicit biases.

The Measurement of Implicit Attitudes and Beliefs

The primary scholarly controversy surrounding the concept of implicit biases is related to how they are measured. The Implicit Associate Test (IAT) is, as stated, a test of associations. The test forces people to associate positive (e.g., smart) and negative (e.g., violent) traits with objects (e.g., racial groups, gender, religions). Things that make sense have a faster cognitive connection, and things that do not make sense take longer to think about. Thus, if we timed people on the speed by which they made positive associations like “beautiful” and “princess,” and negative ones, like “dangerous” and “sharks,” we would find that the associations are easier and have a short response time. This is because they are psychologically consistent (or consonant). But, if we asked about dangerous princesses and beautiful sharks, the response time might be longer because the connection is not expected; it is inconsistent (or dissonant).

After decades of research psychologists have reached a consensus that people associate racial minorities with more negative traits; and they especially associate African Americans with negative traits. These associations are implicit because people do not know they are making the association due to the speed by which the brain operates. The controversy around the IAT involves what to call the association. While some like to call it “prejudice” others prefer to use the term “bias.” Regardless of what one calls the IAT results, they clearly show that an association is more or less present in one’s mind that therefore has the potential for impacting one’s decisions and judgements.

With regard to the reliability of the test, it is important to understand how the test works. Reliability is a measure of the tests ability to measure the same thing over and over again. All IAT tests are based on the same premise: associate traits with objects. However, as people take the test over and over again, they learn how to perform in the test. For example, subjects in the studies are told that they have to make the right decision (positive traits with positive objects), and are penalized (just in the experiment) for making the wrong the decisions. Thus, they have an incentive to process the information fast. However, at the end of the IAT people are typically debriefed and told their result. If they ever take the test again, they know how to respond to the test. Thus, the reliability of an IAT score can be affected by how much respondents know about the IAT test. Similarly, if I administer a 15 item scale of anti-Semitism to an individual, they might be honest the first time they fill out the instrument; but once I tell them the implications of their responses, they may act in a socially desirable way. Such behavior reduces the test-retest reliability scores.

Selection Criteria for Law Enforcement

My last point surrounds the need to come up with additional standards for law enforcement officials during the recruitment and hiring process. Individuals should go through a series of

implicit associate tests to determine the extent to which they hold biases toward certain groups. While this may seem somewhat obtrusive or unnecessary, it may save money in the long run by reducing public grievances and other potential issues down the road.

Additional Readings in Implicit Bias and Interracial Interactions with Authority Figures

I also submit the following references for the record (actual papers are forwarded as attachments).

Avery, Derek R., Jennifer A. Richeson, Michelle R. Hebl, and Nalini Ambady. "It does not have to be uncomfortable: The role of behavioral scripts in Black–White interracial interactions." *Journal of Applied Psychology* 94, no. 6 (2009): 1382.

Correll, Joshua, Bernadette Park, Charles M. Judd, and Bernd Wittenbrink. "The police officer's dilemma: Using ethnicity to disambiguate potentially threatening individuals." *Journal of personality and social psychology* 83, no. 6 (2002): 1314.

Correll, Joshua, Sean M. Hudson, Steffanie Guillermo, and Debbie S. Ma. "The police officer's dilemma: A decade of research on racial bias in the decision to shoot." *Social and Personality Psychology Compass* 8, no. 5 (2014): 201-213.

Fridell, Lorie, and Hyeyoung Lim. "Assessing the racial aspects of police force using the implicit-and counter-bias perspectives." *Journal of criminal justice* 44 (2016): 36-48.

LeCount, Ryan Jerome. "More Black than Blue? Comparing the Racial Attitudes of Police to Citizens." In *Sociological Forum*. 2017.

Richardson, L. Song. "Police racial violence: Lessons from social psychology." *Fordham L. Rev.* 83 (2014): 2961.

APPENDIX E

(Numbering of Remaining Pages Reflects that of the Settlement Agreement)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAYVON WRIGHT, ANTOINE MURREY, KEITH MEDLEY, GREGORY GRIFFIN, AND RASHAD EL, individually)	
)	
Plaintiffs,)	C.A. No. 13-1966-GAM
)	
v.)	JURY TRIAL DEMANDED
)	
CITY OF WILMINGTON,)	
)	
Defendant.)	

STIPULATION OF SETTLEMENT AND ORDER

WHEREAS, plaintiffs Jayvon Wright, Antoine Murrey, and Keith Medley commenced the above-captioned action (the “Action”) against the City with the filing of the Complaint on November 21, 2013 (D.I. 1) pursuant to 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution;¹

WHEREAS, the Named Plaintiffs filed a First Amended Complaint (D.I. 61) on March 31, 2016 and a Second Amended Complaint (“SAC” D.I. 146) on May 4, 2017;

WHEREAS, the Named Plaintiffs allege in the Action, *inter alia*, that the City permits “two hour detentions” or “investigatory detentions” as a matter of policy, custom, practice or procedure (or any or all of these) pursuant to which WPD officers arrest subjects based solely on reasonable suspicion and not on probable cause; and that the City’s supervision and training fail to properly instruct on various aspects of law enforcement procedure, including but not limited to “investigative stops [and] detentions” SAC ¶ 152;

WHEREAS, the City denies that it has (or had) such a “two hour detention” or “investigatory detention” policy, and the City further denies that its officers, as a matter of

¹ Defined terms have the meaning assigned below in Section B “Definitions”.

policy, custom, practice or procedure arrest subjects without probable cause. The City maintains that its training and supervision are fully consistent with the law and has vigorously defended against the claims asserted in the Action;

WHEREAS, on November 21, 2013 (D.I. 3), plaintiffs Jayvon Wright, Antoine Murrey, and Keith Medley moved to certify a class pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3);

WHEREAS, on January 28, 2016, the Magistrate Judge issued a Report and Recommendation (D.I. 52) denying the City's Motion to Dismiss Plaintiffs' constitutional claims, but recommending that Plaintiffs' Motion to Certify Class be denied. That Report and Recommendation was adopted by the Court on March 31, 2016 (D.I. 60);

WHEREAS, plaintiffs appealed the denial of class certification to the United States Court of Appeals for the Third Circuit pursuant to Fed. R. Civ. P. 23(f);

WHEREAS, the United States Court of Appeals for the Third Circuit dismissed the appeal on February 17, 2017;

WHEREAS, following discovery, the Class Representatives filed a second Motion for Class Certification (D.I. 160) on June 9, 2017 seeking certification of a class pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3);

WHEREAS, the Court held oral argument on the second Motion for Class Certification on October 19, 2017, and the parties shortly thereafter sought, and the Court entered, a stay of proceedings while settlement alternatives were explored;

WHEREAS, the parties have engaged in extensive discovery and briefing relating to the allegations in the Action, and WPD's policies, customs, practices and procedures in regard to, *inter alia*, stops, detentions and arrests, and regarding WPD's training and supervision on such topics.

WHEREAS, the terms of this Stipulation were vigorously negotiated over a period of several months; and

WHEREAS, the negotiations have resulted in this Stipulation which (subject to the approval of the Court) settles the Action in the manner and upon the terms set forth below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, subject to the approval of the Court, as follows:

A. INTRODUCTION

1. The parties enter into this Stipulation after arm's length, good faith negotiations solely for the purpose of avoiding the burdens of further litigation. Settlement of the Action under the terms stated in this Stipulation is in the public interest because the Stipulation avoids diversion of private and City resources to adversarial action by the parties.

2. The City denies the claims alleged in the Action and any and all liability, and denies that it had or has a policy, practice, custom or procedure that deprived or deprives persons of any of the rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

3. This Stipulation, the terms provided for herein, the settlement of the Named Plaintiffs' individual damages claims, and the implementation of the policies and training detailed in Sections D - F herein, do not, and shall not be deemed to, constitute an admission or concession of wrongdoing by the City, nor an admission or concession that any of its defenses lack merit. Nor shall this Stipulation, nor any of the negotiations leading to this Stipulation, constitute an admission or concession by the City as to the validity or accuracy of any of the allegations, assertions, or claims made by or on behalf of any of the Plaintiffs (in the Action or otherwise) all of which remain disputed.

4. This Stipulation also shall not constitute, nor be deemed to constitute, an admission or concession by or on behalf of any of the Plaintiffs that the claims alleged in the Action lack merit.

5. In the event this Stipulation is not approved in an order of Final Approval that becomes Final, it shall not be used in the Action nor in any other proceeding for any purpose and any judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*, except as stated in Paragraph B. 7 below.

6. This Court has jurisdiction over the Action under 28 U.S.C. §§ 1331. Venue is proper in the United States District for the District of Delaware pursuant to 28 U.S.C. § 1391.

B. DEFINITIONS

1. "Action" shall have the meaning assigned in the Recitals, above.
2. "Class" shall be as defined in Paragraph C. 1, below.
3. "Class Members" shall mean all members of the Class defined in Paragraph C. 1, below.
4. "Class Representatives" shall mean Keith Medley and Rashad El.
5. "Class Counsel" shall mean the attorneys of record for the Class Representatives and putative class in the Action.
6. "City" shall mean the City of Wilmington.
7. "Effective Date" means the date on which the Court's order and judgment of Final Approval approving the Stipulation and dismissing the Action with prejudice becomes Final. The "Effective Date" shall be the date upon which this Stipulation enters into effect; provided, however, that Paragraphs A. 2 - A. 5 shall take effect on the Signature Date and shall survive termination of this Stipulation.

8. "Final" means when referring to an order or judgment: (i) that the time for appeal or appellate review of such order or judgment has expired; or (ii) if there has been an appeal, that such order or judgment has been affirmed on appeal and that all applicable periods for reconsideration, appeal, rehearing or review, by certiorari or otherwise, have expired, or (iii) that said appeal has been dismissed or decided without causing a material change in the order or judgment, and such order or judgment is no longer subject to review by further appeal, reconsideration, rehearing, review, writ of certiorari or otherwise.

9. "Final Approval" shall mean the entry of a final order and judgment by which the Court approves this Stipulation and dismisses the Action with prejudice, following a fairness hearing.

10. "Final Approval Date" shall mean the date on which this Court enters an order of Final Approval.

11. "Named Plaintiffs" shall mean Jayvon Wright, Keith Medley, Antoine Murrey, Gregory Griffin, and Rashad El, and shall include the Class Representatives.

12. "Parties" shall mean Named Plaintiffs and City.

13. "Plaintiffs" shall mean the Named Plaintiffs (including the Class Representatives) and Class Members.

14. "Preliminary Approval" shall mean the entry of an order by which the Court preliminarily approves this Stipulation.

15. "Preliminary Approval Date" shall mean the date on which this Court enters an order of Preliminary Approval.

16. "Released Persons" shall have the meaning given in Paragraph K. 1 hereof.

17. "Settled Claims" shall have the meaning given in Paragraph K. 1 hereof.

18. "Signature Date" shall mean the date this Stipulation (defined below) is signed by authorized counsel for the Named Plaintiffs and the City. The Signature Date is November 19, 2018.

19. "Stipulation" shall mean this Stipulation of Settlement and Order executed on behalf of the City and the Plaintiffs in the above-captioned action.

20. "WPD" shall mean the Wilmington Police Department.

21. "WPD Detention Practices" shall be as defined in Paragraph C.1.

22. Notwithstanding Paragraphs B. 7 - 10 above, in the event that any appeals, petitions, motions or writs are taken or filed, or any other judicial action or proceeding is initiated regarding the Court's Final Approval of this Stipulation or entry of final judgment dismissing this Action with prejudice, any and all obligations required to be undertaken pursuant to this Stipulation are stayed pending the full and final determination of any and all such appeals, petitions, motions or writs, such that the Court's order of Final Approval approving this Stipulation and dismissing the Action with prejudice are fully and fairly Final and not subject to further appeal, petition, motion, writ, rehearing or other review. This Stipulation shall be null, void and of no effect, and no party shall be required to undertake any obligations in accordance with this Stipulation, in the event that the final determination of any such appeals, motions, petitions, writs or other review results in a rejection of or material change to the settlement as set forth in this Stipulation, or a reversal of the order dismissing the Action with prejudice; provided, however, that Paragraphs A. 2 - A. 5 shall survive termination of this Stipulation.

C. CLASS CERTIFICATION

1. For settlement purposes only, a non-opt-out class is certified pursuant to Fed. R. Civ. P. 23(a), (b)(1) and (b)(2) consisting of:

All persons who have been or are at risk of being stopped, detained, handcuffed, transported, searched or imprisoned during the period lasting from November 21, 2011 to the Effective Date by any officer or other member of WPD under circumstances alleged to constitute an unlawful arrest without probable cause resulting from any of the following: (i) officer conduct purportedly pursuant to 11 *Del. C.* § 1902, WPD Directive 6.10K, or any statute, directive, policy, practice, pattern, custom or procedure of detention for purposes of investigation, or 2 hour detention (collectively, the “WPD Detention Practices”); or (ii) any alleged deficiencies in training or supervision concerning or relating to the WPD Detention Practices.

2. Paragraph C.1 above is expressly conditioned and contingent upon (i) entry of an order of Final Approval by the Court, (ii) that becomes Final. In the event the order of Final Approval is denied, reversed or modified on appeal (or remand), or otherwise does not become Final, Paragraph C. 1 respecting class certification shall be void and of no effect.

D. POLICY ON STOPS PURSUANT TO 11 *DEL. C.* § 1902

1. The Class Representatives (through Class Counsel) and the City have negotiated the terms of a new Directive 6.10K (“New Directive 6.10K”) and have agreed that New Directive 6.10K will promote constitutional interactions between WPD officers and persons stopped and detained for questioning. Former WPD Directive 6.10K (which was a subject of the Action) has been stricken by WPD.

2. New Directive 6.10K is attached under seal as Exhibit A.

3. New Directive 6.10K will take effect on or within 60 days following the Signature Date.

E. POLICY ON DOCUMENTATION.

1. The Class Representatives (through Class Counsel) and the City have negotiated and developed a new directive on documentation.

2. The new policies on documentation are contained in New Directive 6.10K.

3. The new policies on documentation contained in New Directive 6.10K will take effect on or within 60 days following the Signature Date.

F. TRAINING

1. The Class Representatives (through Class Counsel) and the City have negotiated a schedule of training and training materials regarding New Directive 6.10K, regarding stops pursuant to 11 *Del. C.* § 1902, and regarding the new policies on documenting probable cause for arrests that will aid in training WPD officers to engage in constitutional interactions with individuals who are stopped and detained for questioning.

2. The revised training materials are attached under seal as Exhibit(s) B-C to this Stipulation.

3. The schedule of training is attached as Exhibit D and shall take effect on or within 60 days following the Signature Date.

G. INDIVIDUAL DAMAGES CLAIMS AGAINST CITY

1. Solely for purposes of settlement and not as an admission of liability for damages in any amount, in order to avoid the costs, burden and disruption of further litigation, the City has agreed to pay, and the Named Plaintiffs have agreed to accept, the following sums to settle the Named Plaintiffs' individual damages claims:

- a. Rashad El: \$10,000.00
- b. Keith Medley: \$5,500.00
- c. Jayvon Wright: \$4,000.00
- d. Antoine Murrey: \$1,500.00
- e. Gregory Griffin: \$10,000.00

2. All attorneys' fees and costs relating to the Named Plaintiffs' individual damages

claims shall be included in the amount awarded by the Court pursuant to Section N. 1; there shall be no separate or additional award of attorneys' fees and costs for the resolution of the Named Plaintiffs' individual damages claims.

3. The City has also agreed to pay, subject to the approval of the Court, an incentive award to each of the Class Representatives in the amount of \$4,500.00 for Mr. El, and \$4,500.00 for Mr. Medley.

4. The Named Plaintiffs and the City agree that each Named Plaintiff will sign and execute a Settlement Agreement and Release in the form attached hereto as Exhibit E. The failure of a Named Plaintiff to execute any of the aforementioned documents will result in non-payment of the individual award provided for in this Stipulation to such Named Plaintiff, but will not otherwise affect the operation of this Stipulation and the Release provided for in Section K below.

H. CONFIDENTIALITY

1. Nothing in this Stipulation or undertaken pursuant to this Stipulation constitutes or is intended to constitute a waiver of any applicable privilege.

2. The parties shall continue to be subject to the Protective Order entered in the Action (D.I. 129), and all other orders of the Court regarding disclosure of documents and information in this case.

I. NOTICE TO THE SETTLEMENT CLASS AND CERTAIN OFFICIALS

1. The parties shall cause to be published a notice in the form attached hereto as Exhibit F. Such notice shall be published in The News Journal at least three times after the Preliminary Approval Date and prior to the scheduled fairness hearing. The notice shall be posted conspicuously in the Louis L. Redding City County Building, 800 N. French Street,

Wilmington Delaware within thirty (30) days after the Preliminary Approval Date, until the date of the scheduled fairness hearing.

2. The City will post an announcement of the proposed settlement on its website, with a link to the notice referenced in I. 1 above on the home page of the Website, entitled "Investigatory Detention Class Action Settlement Notice." The link shall be active within thirty (30) days after the Preliminary Approval Date, until the date of the scheduled fairness hearing.

3. Costs of publication shall be borne by the City.

4. Within 10 days of submission of the Stipulation to the Court, the City will serve CAFA Notice on State and Federal officials as required by 28 U.S.C. § 1715(b). The City will bear the costs associated with serving the CAFA Notice.

J. EFFECT OF THE SETTLEMENT STIPULATION ON THE ACTION

1. The Class Representatives (through Class Counsel) will take all necessary and appropriate steps to obtain approval of this Stipulation and dismissal of the Action with prejudice. If the Court approves this Stipulation, and if there is an appeal from such decision, the City will join in the defense of the Stipulation.

2. On the Final Approval Date the District Court will dismiss the Action with prejudice and without costs, expenses, or attorneys' fees in excess of the amount authorized by the Court in accordance with Paragraph N. 1 herein. The terms of this Stipulation shall be a full, final, and complete resolution of the Action.

K. RELEASE

1. The Stipulation, as of the Effective Date, resolves in full the Settled Claims. "Settled Claims" include any and all claims, rights of action and other demands for relief, whether at law or in equity, and whether based on statute, rule, regulation or other law or right,

including but not limited to rights arising under the U.S. or Delaware Constitutions, that Plaintiffs may have, known or unknown, against any or all of the City, WPD, their predecessors, successors or assigns, their past and present officials, officers, employees, representatives, attorneys, insurers and agents (collectively the "Released Persons") based upon, arising from or relating to (i) any of the WPD Detention Practices, (ii) any training or supervision with respect to any of the WPD Detention Practices or (iii) the documentation of any action taken in connection with any of the WPD Detention Practices. "Settled Claims" shall further include, without limitation, the claims alleged or that could have been alleged in the Action, any and all claims for class-wide damages that were sought or could have been sought in the Action, whether under Fed. R. Civ. P. 23(b)(3) or otherwise, and all other claims that arise from or relate to the acts, events, occurrences or statements, or any other matter whatsoever set forth in any or all of the Complaint, the First Amended Complaint, and the Second Amended Complaint in the Action; provided, however, that "Settled Claims" does not include the individual, non-class damages claims for which separate Settlement Agreements and Releases for the Named Plaintiffs will be required pursuant to Paragraph G. 4 herein, and claims falling within Paragraph K. 5, below.

2. As of the Effective Date, the Plaintiffs, shall be deemed to have fully, finally and forever released, relinquished and discharged, for themselves and all of their heirs, executors, administrators, successors and assigns, and for all persons claiming by or through any of them, all of the Settled Claims against the Released Persons, and shall be forever enjoined from prosecuting any Settled Claims against any of the Released Persons.

3. With respect to any of the Settled Claims, as of the Effective Date the Plaintiffs shall be deemed to have expressly waived, relinquished, and released any and all provisions,

rights, and benefits conferred by or under Cal. Civ. Code § 1542 or any law of the United States or any foreign state or any state of the United States or territory of the United States, or principal of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

4. As of the Effective Date, Plaintiffs shall be deemed to have acknowledged that the foregoing waiver was separately bargained for, is an integral element of the settlement provided for in this Stipulation, and was relied upon by the City in entering into the Settlement.

5. This Stipulation does not affect the rights of any Plaintiff, inclusive of all Class Members, to bring individual, non-class damages claims against the Released Persons (or any of them) solely on an individual, non-class basis for what they believe is a violation of their rights, including individual, non-class claims arising from or related to the Settled Claims; provided however that the individual, non-class claims of the Named Plaintiffs are being settled pursuant to Section G hereof. Nor shall this Stipulation affect in any way any defenses to such claims that are or may be available to any of the Released Persons.

6. This Release will be, and may be, raised as a complete defense to and will preclude any action or proceeding encompassed by the release of the Released Persons, subject to Paragraph K.5 above.

L. APPLICATION AND PARTIES BOUND

1. Each of the Plaintiffs shall be deemed to have submitted to the jurisdiction of this Court.

2. This Stipulation applies to and is binding upon the Plaintiffs and the City and its officers, agents, employees, successors, and assigns. This Stipulation is enforceable only by the Plaintiffs and the City. Each of the undersigned representatives of the Plaintiffs and the City certifies that he or she has authority from his or her clients to enter into this Stipulation.

3. The terms of this Stipulation shall be forever binding on the Plaintiffs as well as their heirs, executors and administrators, successors, and assigns and those terms shall have *res judicata* and all other preclusive effect in all pending or future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits, or other proceedings involve matters encompassed by the release provided for in Section K above.

M. MODIFICATION AND TERMINATION OF THE SETTLEMENT STIPULATION

1. This Stipulation represents the entire agreement among the Plaintiffs and the City, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation shall be deemed to exist, or to bind the Plaintiffs and the City, or to vary the terms and conditions contained herein, or to determine the meaning of any provisions herein. This Stipulation can be modified or amended only in a writing signed by representatives of the parties hereto.

N. ATTORNEYS' FEES AND COSTS

1. The City shall pay an amount of attorneys' fees and costs negotiated as part of the settlement process, subject to approval by the Court, in the amount of \$512,163.70, to Class

Counsel.

O. NULLIFICATION

1. Subject to Paragraph O. 2 below, this Stipulation shall terminate, is null and void, and the parties shall be restored to their respective positions in the Action, in the event that any of the following do not occur:

a. Preliminary Approval of this Stipulation by the Court without modification unless approved in writing by the parties; or

b. The entry of an order of Final Approval of this Stipulation by the Court without modification unless approved in writing by the parties; or

c. Dismissal of the Action with prejudice after Final Approval by the Court;
or

d. The Effective Date does not occur.

2. The foregoing notwithstanding, Paragraphs A. 2 - A. 5 shall survive termination of this Stipulation, and shall not be rendered null and void thereby.

P. APPLICABLE LAW

1. This Stipulation and any rights, remedies or obligations provided for hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of Delaware.

/s/ Ryan R. Tack-Hooper
Ryan R. Tack-Hooper (#6209)
American Civil Liberties Union of Delaware
100 W. 10th Street, Suite 706
Wilmington, Delaware 19801
(302) 654-5326
rtackhooper@aclu-de.org

Stephen P. Norman (#4620)
The Norman Law Firm
30838 Vines Creek Road, Suite 3
Dagsboro, Delaware 19939
(302) 537-3788
snorman@thenormanlawfirm.com

Attorney for Plaintiffs

Dated: January 22, 2019

/s/ Kelly E. Farnan
C. Malcolm Cochran, IV (#2377)
Kelly E. Farnan (#4395)
Christine D. Haynes (#4697)
Richards, Layton & Finger, P.A.
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700
cochran@rlf.com
farnan@rlf.com
haynes@rlf.com

Attorneys for Defendant

Dated: January 17, 2019

SO ORDERED and APPROVED this 15th day of MARCH, 2019.

Sanjiv A. Jain

U.S.D.J.

EXHIBIT D

Wilmington Police Department: Schedule of Trainings on New Directive 6.10K

January 8, 2019

January 15, 2019

January 29, 2019

February 19, 2019

Additional trainings to be scheduled
to the extent needed to complete training
of all current WPD officers

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAYVON WRIGHT, ANTOINE MURREY,)	
KEITH MEDLEY, GREGORY GRIFFIN, AND)	
RASHAD EL, individually)	
)	C.A. No. 13-1966-GAM
Plaintiffs,)	
)	JURY TRIAL DEMANDED
v.)	
)	
CITY OF WILMINGTON,)	
)	
Defendant.)	

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (this "Agreement") is entered into by and between _____ ("Plaintiff") and the City of Wilmington ("City") with respect to the following:

WHEREAS, plaintiffs Jayvon Wright, Antoine Murrey, and Keith Medley commenced the above-captioned (the "Action") against the City with the filing of the Complaint on November 21, 2013 (D.I. 1) pursuant to 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution, and;

WHEREAS, plaintiffs Gregory Griffin and Rashad El, together with plaintiffs Wright, Murrey and Medley (all plaintiffs are hereinafter referred to as the "Plaintiffs") filed a First Amended Complaint (D.I. 61) on March 31, 2016 and a Second Amended Complaint ("SAC" D.I. 146) on May 4, 2017, and;

WHEREAS, the Plaintiffs allege in the Action, *inter alia*, that the City permits "two hour detentions" or "investigatory detentions" as a matter of policy, custom, pattern, practice or procedure (or any or all of these) pursuant to which WPD officers arrest subjects based solely on reasonable suspicion and not on probable cause; and that the City's supervision and training fail to properly instruct on various aspects of law enforcement procedure, including but not limited to "investigative stops [and] detentions" SAC ¶ 152, and;

WHEREAS, the City denies that it has such a "two hour detention" or "investigatory detention" policy, and that its training and supervision are deficient, and has vigorously defended against the claims asserted in the Action, and;

WHEREAS, plaintiffs Medley and El have sought class certification in the Action, which claims are being resolved (subject to approval of the Court) by a separate Stipulation of

Settlement and Order (the "Class Action Settlement Stipulation") providing for non-monetary relief in the form of new policies and training, and;

WHEREAS, the Class Action Settlement Stipulation provides at Section G that the individual damages claims of the Plaintiffs will be settled in a separate Settlement Agreement and General Release for each;

NOW THEREFORE, in consideration of the respective representations, covenants, agreements, warranties and conditions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Within 14 days after the Effective Date as defined in the Class Action Stipulation, counsel for Plaintiff will deliver an original, executed copy of this Agreement to counsel for the City, together with (if necessary to conclude dismissal of Plaintiff's claims in the Action with prejudice) a signed stipulation of dismissal with prejudice in the form attached hereto as Exhibit A, dismissing Plaintiff's claims asserted in the Action with prejudice. Simultaneously therewith, the City will deliver a settlement check made payable to counsel for Plaintiff in the amount of _____ (the "Settlement Amount"). The Settlement Amount shall be inclusive of all attorneys' fees, costs and expenses incurred by Plaintiff's counsel in resolving his claim(s), whether arising under 42 U.S.C. § 1988, or any other statute or authority.

2. Plaintiff, for himself and on behalf of any person claiming by, through or under him hereby forever irrevocably and unconditionally releases, remises and discharges the City, Wilmington Police Department ("WPD"), their predecessors, successors or assigns, their past, and present officials, officers, employees, representatives, attorneys, insurers and agents (collectively the "Released Persons"), and each of their heirs, executors, administrators, successors and assigns, of and from any and all claims, rights of action and other demands for relief, whether at law or in equity, and whether based on statute, rule, regulation or other law or rights arising under the U.S. and Delaware Constitutions, that Plaintiff may have, known or unknown, against any or all of the Released Persons based upon, arising from or relating to (i) any officer conduct constituting an unlawful arrest purportedly pursuant to 11 *Del. C.* § 1902, WPD Directive 6.10K, or any statute, directive, policy, practice, pattern, custom or procedure of detention for purposes of investigation, or 2 hour detention (the "WPD Detention Practices"), (ii) any training or supervision with respect to any of the WPD Detention Practices, (iii) the documentation of any action taken in connection with any of the WPD Detention Practices. "Settled Claims" shall further include, without limitation, the claims alleged or that could have been alleged in the Action, any and all claims for class-wide damages that were sought or could have been sought in the Action, whether under Fed. R. Civ. P. 23(b)(3) or otherwise, and all other claims that arise from or relate to the acts, events, occurrences or statements, or any other matter whatsoever set forth in any or all of the Complaint, the First Amended Complaint, and the Second Amended Complaint in the Action.

3. This Agreement has in all respects been voluntarily and knowingly executed by Plaintiff, on advice and with approval of his legal counsel.

4. It is understood and agreed that this Agreement is being made in connection with the settlement, compromise and release of disputed allegations and claims and that this Agreement, and any negotiations, statements or actions in connection therewith, are not to be construed as, and will not be argued to be, an admission or concession of liability by the City or any other person or entity on account of the disputed claims. The City, WPD and their officers, agents and employees expressly deny wrongdoing or liability of any sort and by this Agreement intend merely to avoid the cost, expense and inconvenience of contested litigation, and to eliminate further involvement therein.

5. Together with Stipulation of Settlement and Order (with exhibits) executed on November 19, 2018, this Agreement constitutes the entire agreement by and among the undersigned, and each of them, and it supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, concerning the subject matter herein among the parties to this Agreement.

6. This Agreement and any rights, remedies or obligations provided for hereunder, shall be interpreted, construed and enforced in accordance with the laws of the State of Delaware and any action upon this Agreement shall be brought in a court of competent jurisdiction within the State of Delaware.

7. Other than as stated herein, each of the undersigned represents and warrants that they have not assigned, transferred, pledged or hypothecated, or purported to assign, transfer or hypothecate, to any person, entity or individual, any of the claims, demands causes of action, obligations, damages, attorneys' fees, costs and liabilities released pursuant to this Agreement.

8. If any provision or any part of any provision of this Agreement is for any reason held to be invalid, unenforceable or contrary to any public policy, law, statute and/or ordinance, then the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

9. Any modification, amendment or alteration of this Agreement, or any of its terms, shall be in writing and signed by all parties to this Agreement; nothing else including, but not limited to, detrimental reliance, estoppel, oral representations or any promises whatsoever shall modify, amend, or alter this Agreement.

10. Each of the parties agrees that it will promptly execute and deliver all such documents and instruments as may be necessary and appropriate to effectuate the terms of this Agreement. The parties agree that monetary damages would be inadequate to remedy a breach of this provision and that specific performance is an appropriate remedy for the breach of this provision.

11. Each of the undersigned warrants that they have full power, capacity and authority to execute this Agreement on behalf of the party so indicated.

12. Each of the undersigned warrants that they have read the terms of this Agreement and had the opportunity to have the terms used herein and consequences thereof explained by their attorney prior to signing.

13. All representations, warranties and agreements set forth in this Agreement shall be deemed continuing and shall survive the execution date of this Agreement.

14. This Agreement may be executed in counterparts and, as so executed, shall constitute one agreement binding on all parties.

15. The undersigned shall each bear his own attorneys' fees and costs, except as otherwise provided in the Class Action Settlement Stipulation.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth beneath their signatures below with the intention of making this a document under seal.

ATTEST:

[Name] Plaintiff

Witness

(SEAL)

NAME: _____

DATE: _____

ATTEST:

CITY OF WILMINGTON

Witness

BY: _____ (SEAL)

NAME: _____

TITLE: _____

DATE: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAYVON WRIGHT, ANTOINE MURREY,)	
KEITH MEDLEY, GREGORY GRIFFIN, AND)	
RASHAD EL, individually)	
)	C.A. No. 13-1966-GAM
Plaintiffs,)	
)	JURY TRIAL DEMANDED
v.)	
)	
CITY OF WILMINGTON,)	
)	
Defendant.)	

STIPULATION OF DISMISSAL

WHEREAS, the Court having finally approved the Stipulation of Settlement and Order, resolving the class claims asserted in the above referenced action the (Class Action Stipulation), and;

WHEREAS, the parties hereto agree that the Effective Date as defined in the Class Action Stipulation has occurred and that Plaintiff has received his Settlement Amount, as defined in his individual Settlement Agreement and Release in this case;

NOW THEREFORE, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), plaintiff [*name of Plaintiff*] and the City of Wilmington, by and through their undersigned counsel, do hereby stipulate and agree that the claims asserted by him in the above-captioned action are hereby voluntarily dismissed with prejudice. Each party shall bear its own fees and costs.

Ryan R. Tack-Hooper (#6209)
American Civil Liberties Union of Delaware
100 W. 10th Street, Suite 706
Wilmington, Delaware 19801
(302) 654-5326
rtackhooper@aclu-de.org

Stephen P. Norman (#4620)
The Norman Law Firm
30838 Vines Creek Road, Suite 3
Dagsboro, Delaware 19939
(302) 537-3788
snorman@thenormanlawfirm.com

Attorney for Plaintiffs

DATE: _____

C. Malcolm Cochran, IV (#2377)
Kelly E. Farnan (#4395)
Christine D. Haynes (#4697)
Richards, Layton & Finger, P.A.
920 North King Street
Wilmington, Delaware 19801
(302) 651-7700
cochran@rlf.com
farnan@rlf.com
haynes@rlf.com

Attorneys for Defendant

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAYVON WRIGHT, ANTOINE MURREY,
KEITH MEDLEY, GREGORY GRIFFIN, AND
RASHAD EL, individually

Plaintiffs,

v.

CITY OF WILMINGTON,

Defendant.

)
)
)
) C.A. No. 13-1966-GAM

)
) JURY TRIAL DEMANDED

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

TO: All persons who have been or are at risk of being stopped, detained, handcuffed, transported, searched or imprisoned during the period lasting from November 21, 2011 until the Court’s final approval of the Settlement Stipulation by any officer or other member of WPD under circumstances alleged to constitute an unlawful arrest without probable cause resulting from any of the following: (i) officer conduct purportedly pursuant to 11 *Del. C.* § 1902, WPD Directive 6.10K, or any statute, directive, policy, practice, pattern, custom or procedure of detention for purposes of investigation, or 2 hour detention (collectively, the “WPD Detention Practices”); or (ii) any alleged deficiencies in training or supervision concerning or relating to the WPD Detention Practices (the “Putative Settlement Class”).

**PLEASE READ THIS NOTICE CAREFULLY AS IT ADDRESSES A LAWSUIT THAT
MAY AFFECT YOUR RIGHTS.**

This Notice does not constitute a determination by the Court concerning the merit or lack of merit of the allegations made by the Plaintiffs against the City of Wilmington (“City”) in this case.

I. INTRODUCTION

Jayvon Wright, Antoine Murrey, Keith Medley, Gregory Griffin and Rashad El (“Named Plaintiffs”), individually, and in the case of Keith Medley and Rashad El (the “Putative Class Plaintiffs”) on behalf of a class of all others similarly situated, and Defendant City of Wilmington (“City”), who are parties to the above captioned putative class action entitled *Wright v. City of Wilmington*, Civil Action No. 13-1966-GAM (D. Del.) (the “Action”), have reached an agreement, subject to the approval of the Court, to settle the Action (the “Settlement Stipulation”). This Notice describes the proposed Settlement Stipulation and how it may affect your legal rights. The proposed Settlement Stipulation will not go into effect until: (1) individuals whose rights may be affected by the Settlement Stipulation have had the chance to

object to it; and (2) the Court has a hearing and approves the Settlement Stipulation as fair, adequate and reasonable and all appeals from that approval have been exhausted.

Your rights as a member of the Putative Settlement Class are affected by the Settlement Stipulation if you have been or are at risk of being stopped, detained, handcuffed, transported, searched or imprisoned during the period lasting from November 21, 2011 to the date of the Court's final approval of the Settlement Stipulation by any officer or other member of WPD under circumstances alleged to constitute an unlawful arrest without probable cause resulting from any of the following: (i) officer conduct purportedly pursuant to 11 *Del. C.* § 1902, WPD Directive 6.10K, or any statute, directive policy, practice, pattern, custom or procedure of detention for purposes of investigation, or 2 hour detention (collectively, the "WPD Detention Practices"); or (ii), any alleged deficiencies in training or supervision concerning or relating to the WPD Detention Practices.

In the Action, the Putative Class Plaintiffs allege that WPD had a policy, practice, pattern, custom or procedure pursuant to which WPD officers have conducted investigatory stops and detentions under circumstances constituting unlawful arrests. After hard fought litigation, including extensive discovery into the allegations in the Action, and negotiations between counsel for the parties, the Putative Class Plaintiffs and counsel for the Putative Class (from the American Civil Liberties Union of Delaware and the Norman Law Firm, hereinafter "Putative Class Counsel") have concluded, following a thorough investigation, that the terms and conditions of the Settlement Stipulation are fair, reasonable and in the best interests of the Putative Class. In reaching this conclusion, the Putative Class Plaintiffs and Putative Class Counsel have analyzed the benefits of the Settlement Stipulation, the possible outcome of further litigation, and the expense and length of continued proceedings necessary to prosecute the claims through trial, and possible appeals.

By entering into the Settlement Stipulation, the City and WPD do not admit any fault or wrongdoing. The City denies that WPD has (or had) a policy, practice, pattern, custom or procedure pursuant to which WPD officers unlawfully arrest subjects. The City and WPD deny the allegations in the Action and do not admit to liability of any kind in the Settlement Stipulation, or otherwise.

II. SUMMARY OF PROPOSED SETTLEMENT

Below is a brief summary of what the Settlement Stipulation addresses, subject to approval by the Court:

- * Revisions to WPD directives that instruct officers on the initiation of investigatory stops.
- * Revisions to WPD directives that describe the duration and scope of investigatory stops, and instruct officers on the proper application of 11 *Del. C.* § 1902.
- * Revisions to WPD directives that instruct officers on the differences between investigatory stops and *de facto* arrests.

- * Revisions to WPD directives that instruct WPD officers regarding limitations that apply to decisions to transport a person away from the scene of an investigatory stop.
- * Revisions to WPD directives that require specific documentation for subjects brought to the police station and held in the temporary holding facility (the "Turnkey") and notifying officers that a crime report will be required in such circumstances.
- * Revisions to WPD directives requiring documentation of factual circumstances for each arrest, sufficient for a supervisor to review.
- * A course and schedule of training for WPD officers regarding the foregoing.

Upon approval by the Court, the Settlement Stipulation will resolve and release all class claims of the certified Class against the City relating to any statute or alleged directive, policy, practice, pattern, custom or procedure, or any alleged deficiencies in training or supervision, involving or resulting in unlawful arrests arising prior to the date the Settlement Stipulation goes into effect. Only class wide claims are being resolved. Other than the claims of the five individual plaintiffs (inclusive of the Class Representatives), which are being resolved in separate settlement agreements, individual damage claims (if any) of members of the Class are not being settled but can only be pursued on an individual, non-class basis.

The Named Plaintiffs in the Action, including the Putative Class Plaintiffs, are settling their individual, non-class damage claims against the City in separate settlement agreements. If approved, the Putative Class Plaintiffs will receive \$10,000 in the case of Mr. El, and \$5500 in the case of Mr. Medley for their individual claims; they will also receive individual incentive awards in the amount of \$4500 for Mr. El, and \$4500 for Mr. Medley. These amounts have been proposed solely for purposes of settlement, in order to avoid the costs, burden and disruption of further litigation, and not as an admission of liability, including for damages in any amount. Concurrently with seeking final approval of the Settlement, Putative Class Counsel will apply to the Court for an award of attorneys' fees and expenses in an amount not to exceed \$512,163.70, which, if approved, will be paid by the City following the Effective Date, as specified in the Settlement Stipulation.

III. HEARING ON PROPOSED SETTLEMENT

The Court has scheduled a Fairness Hearing for _____, 2018 at _____,m before the Honorable Gerald A. McHugh, U.S. District Judge, at the United States District Court for the District of Delaware, 844 North King Street, Wilmington DE 19801. At the Fairness Hearing the Court will determine (1) whether to approve certification of the Putative Class, Class Representatives and Class Counsel (2) whether the Class Representatives and Class Counsel have adequately represented the Class; (3) whether the proposed Settlement Stipulation is fair, reasonable, and adequate and should be finally approved; (4) whether judgment should be entered dismissing the Action with prejudice and releasing the Settled Claims; (5) whether to approve Class Counsel's application for an award of attorneys' fees and expenses, and/or the application for incentive fees for the Class Representatives; (6) any objections to the Settlement or to the application for fees and expenses; and (7) such other matters as the Court may deem appropriate. The Court has the right to adjourn the Fairness

Hearing without further notice to the Class, and to approve the Settlement Stipulation with or without modification.

It is not necessary for you to appear at the hearing and you need do nothing if you do not wish to object to the settlement. You may, however, choose to appear at the hearing, either in person or through an attorney. If you wish to appear at the hearing in person or through your own attorney, you or your attorney **must** notify the Clerk of the Court, John A. Cerino, Office of the Clerk, 844 N. King St., Unit 18, Wilmington, Delaware 19801 and the following attorneys **in writing** by _____, 2018:

Ryan R. Tack-Hooper
American Civil Liberties Union of Delaware
100 W. 10th Street, Suite 706
Wilmington, Delaware 19801
(302) 654-5326
rtackhooper@aclu-de.org

Stephen P. Norman
The Norman Law Firm
30838 Vines Creek Road, Suite 3
Dagsboro, Delaware 19939
(302) 537-3788
snorman@thenormanlawfirm.com

Kelly E. Farnan
Richards, Layton & Finger, P.A.
920 North King Street
Wilmington, DE 19801
(302) 651-7705
farnan@rlf.com

Requests to be heard at the Fairness Hearing filed by attorneys should be filed pursuant to the Electronic Case Filing Procedures for the District of Delaware, which are available on line at <http://www.ded.uscourts.gov/cmecf-information>

IV. OPT-OUT

You may not "opt out" of the provisions of the Settlement. You may, however, voice objections to the Settlement as discussed below.

V. OBJECTIONS TO THE SETTLEMENT

If you believe that the Court for any reason should not finally approve the proposed Settlement Stipulation, or any portion of it, you may object to it. You may object through an attorney but need not retain an attorney to object. If you want to object to the proposed Settlement Stipulation, you or your attorney must file an objection in writing with:

Clerk of the Court
John A. Cerino
Office of the Clerk
844 N. King St. Unit 18
Wilmington DE 19801

with copies to:

Ryan R. Tack-Hooper
American Civil Liberties Union of Delaware
100 W. 10th Street, Suite 706
Wilmington, Delaware 19801
(302) 654-5326
rtackhooper@aclu-de.org

Stephen P. Norman
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(302) 651-7705
farnan@rlf.com

All objections must be in writing and must be received by the Clerk of the Court on or before _____, 2018. All objections must state and/or include the following: (1) the name and number of the Action, which are *Wright v. City of Wilmington*, Civil Action No. 13-1966-GAM; (2) the name, address, telephone number and email address of the person (or his/her attorney) intending to object and/or appear at the hearing; (3) proof of membership in the Putative Class; (4) a written statement of objections; (5) the grounds for such objections and any reasons why such Putative Class Member desires to appear and be heard; (6) all documents and writings such person desires the Court to consider. Objections filed by attorneys should be filed pursuant to the Electronic Case Filing Procedures for the District of Delaware, which are available on line at <http://www.ded.uscourts.gov/cmecf-information>. The Court's CM/ECF case filing can be accessed at <http://ecf.ded.uscourts.gov/cgi-bin/login.pl>.

Only members of the Putative Class or their attorneys who have filed written objections shall have the right to present objections orally at the Fairness Hearing, and they will only have the right to do so if they expressly seek it in their written objections.

Unless otherwise ordered by the Court, any members of the Putative Class who do not make their objections or opposition to the Settlement in the manner described above shall be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of the Settlement Stipulation and any other matters pertaining to the claims described therein.

VI. ADDITIONAL INFORMATION

This Notice is a summary and does not describe all of the details of the Settlement Stipulation. The Settlement Stipulation, and all other papers filed in the Action, are available for inspection in the offices of the Clerk of the Court, John A Cerino, Office of the Clerk, 844 N. King St., Unit

18. Wilmington Delaware, 19801. The documents may be examined by any Putative Class Member or by counsel during business hours.

Further information about and copies of this Notice and the Settlement Stipulation are available at www.aclu-de.org and www.TheNormanLawFirm.com. If you have additional questions, you may also call Putative Class Counsel, Ryan R. Tack-Hooper at (302) 654-5326 or Stephen P. Norman at (302) 537-3788.

**PLEASE DO NOT CONTACT THE JUDGE DIRECTLY ABOUT THE
SETTLEMENT OR THIS NOTICE.**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAYVON WRIGHT, ANTOINE MURREY,)	
KEITH MEDLEY, GREGORY GRIFFIN, AND)	
RASHAD EL, individually)	
)	C.A. No. 13-1966-GAM
Plaintiffs,)	
)	JURY TRIAL DEMANDED
v.)	
)	
CITY OF WILMINGTON,)	
)	
Defendant.)	

**ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY
APPROVAL OF PROPOSED SETTLEMENT**

AND NOW, this _____ day of _____, 2018, upon consideration of the Plaintiffs' Motion for Preliminary Approval of Proposed Settlement, the parties' signed Stipulation of Settlement and Order (the "Stipulation"), attached hereto as Exhibit 1, and the memorandum submitted in support thereof, it is hereby ORDERED as follows.

1. Except for terms defined herein, the Court adopts and incorporates by reference the definitions in the Stipulation, including but not limited to those set forth in Section B thereof, for purposes of this Order.

2. The settlement proposed in the Stipulation (the "Proposed Settlement") is PRELIMINARILY APPROVED. The Proposed Settlement falls within the range of possible approval, given: the complexity, expense, and likely duration of the litigation; the stage of proceedings at which the settlement was reached; the risks of establishing liability and securing relief; and the range of reasonableness of the Proposed Settlement in light of the best possible recovery and the risks of continued litigation. *See In re AT&T Corp.*, 455 F. 3d 160, 164-65 (3d Cir. 2006); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534 (3d Cir. 2004). As

reflected in the Stipulation, after nearly five years of litigation, including substantial discovery and extensive briefing on the issues involved in this case at the class certification stage, the Proposed Settlement resulted from serious, informed and arms-length negotiations among the parties. Fees and expenses for class counsel have been negotiated in the amount of \$512,163.70, subject to Court approval. The incentive awards to the two proposed Class Representatives have been negotiated in the amount of \$4,500 subject to Court approval. Putative Class Members are otherwise treated equally.

3. Moreover, the equitable relief proposed herein provides full and complete relief and compensation to the putative Class for their claims except with respect to the individual damages claims, which can still be asserted by individual class members on an individual, non-class basis. The equitable relief proposed will promote constitutional interactions between WPD officers and persons stopped and detained for questioning, and falls within the range of acceptable remedies for the conduct alleged in the Action.

4. In addition, under the Proposed Settlement, while Class Members will release any right they may have to pursue class-wide relief under Federal Rule of Civil Procedure 23, they will retain their right to sue for damages individually.

5. For purposes of settlement only, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), and 23(b)(2), the Court preliminarily certifies the Class as proposed in the Stipulation, subject to final determination at the Fairness Hearing. For purposes of settlement only, the Court preliminarily certifies the Class Representatives as representatives of the Class, and counsel for the Named Plaintiffs in the Action shall be designated as Class Counsel, subject to final determination at the Fairness Hearing.

6. A fairness hearing (the "Fairness Hearing") shall be held before the Court on _____, 2018 at _____ : _____ .m., at the United States District Court for the District of Delaware, 844 North King Street, Wilmington, Delaware 19801, to:

a. Determine whether the proposed Class and this Action should be finally certified, as a mandatory non-opt-out class action pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), and 23(b)(2);

b. determine whether the proposed Class Representatives should be certified as representatives of the class, and proposed Class Counsel certified as counsel for the Class;

c. determine whether the Proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable, adequate and in the best interests of the Class and should be approved by the Court;

d. determine whether the Settled Claims should be released and the Action should be dismissed with prejudice as provided for in the Stipulation;

e. determine whether the negotiated award of attorneys' fees and expenses is fair, reasonable, adequate and in the best interests of the Class;

f. determine whether the negotiated, incentive fees to the Class Representatives is fair, reasonable, adequate and in the best interests of the Class;

g. hear and determine any objections to the Settlement, or the application of Class Counsel for an award of attorneys' fees and expenses, and/or the application of Class Representatives for an award of incentive fees; and

h. rule on such other matters as the Court may deem appropriate.

7. The Court may adjourn the Fairness Hearing (including consideration of the application of Class Counsel for an award of attorneys' fees and expenses) without further notice to the Class other than by announcement at the Fairness Hearing or any adjournment thereof. The Court reserves the right to approve the Proposed Settlement at or after the Fairness Hearing with such modification(s) as may be consented to by the Parties to the Stipulation and without further notice to the Class.

8. The Court approves pursuant to Rule 23 of the Federal Rules of Civil Procedure, in form and content, the Notice of Proposed Class Action Settlement (the "Notice") attached as Exhibit F to the Stipulation and finds that the notice plan set out in the Stipulation is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

9. At least ten (10) business days prior to the Fairness Hearing provided for in Paragraph 6 of this Order, the City shall file, or cause to be filed, an affidavit attesting to the implementation of the notice plan set out in the Stipulation.

10. All proceedings in the Action, other than those incident to approval of the Stipulation, are hereby stayed until further order of this Court. Pending the Effective Date as defined in the Stipulation, the Named Plaintiffs and all Class Members, or any of them, are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting directly, representationally, derivatively, or in any other capacity, any of the Settled Claims against any of the Released Persons.

11. Any member of the proposed Class who objects to any aspect of the class action determination(s), the appointment of Class Counsel and/or the Class Representatives, the

Proposed Settlement, the Stipulation, the dismissal of the Action with prejudice, Plaintiffs' counsel's application for fees and expenses, and/or Class Representatives' application for incentive awards may appear personally or by counsel at the Fairness Hearing and present evidence or argument that may be proper and relevant; provided, however, that no member of the proposed Class may be heard and no papers or briefs submitted by or on behalf of any member of the proposed Class shall be received and considered, except by Order of the Court for good cause shown, unless, no later than fourteen (14) business days prior to the Fairness Hearing, such person files with the Clerk of the Court and serves upon counsel listed below a written objection stating and/or including the following: (1) the name and number of the Action; (2) the name, address, telephone number and email address of the person (or his/her attorney) intending to object and/or appear at the hearing; (3) proof of membership in the putative Class; (4) a written statement of objections; (5) the grounds for such objections and any reasons why such putative Class Member desires to appear and be heard; (6) all documents and writings such person desires for the Court to consider. Such filings shall also be delivered to the following counsel:

Ryan R. Tack-Hooper
American Civil Liberties Union of Delaware
100 W. 10th Street, Suite 706
Wilmington, Delaware 19801
(302) 654-5326
rtackhooper@aclu-de.org

Kelly E. Farnan
Richards, Layton & Finger, P.A.
920 North King Street
Wilmington, DE 19801
(302) 651-7705
farnan@rlf.com

Stephen P. Norman
The Norman Law Firm
30838 Vines Creek Road, Suite 3
Dagsboro, Delaware 19939
(302) 537-3788
snorman@thenormanlawfirm.com

12. Plaintiffs shall serve and file their opening brief in support of the Settlement and their application for attorneys' fees and expenses (the "Fee Application") no later than thirty (30) calendar days prior to the Fairness Hearing. Objections, if any, by Defendants to the Fee Application are to be filed and served no later than ten (10) calendar days prior to the Fairness Hearing. If reply papers are necessary, they are to be filed and served no later than three (3) business days prior to the Hearing. If any objections to the Settlement are received or filed by Class Members, Plaintiffs and/or Defendants may serve and file a brief response to those objections no later than five (5) calendar days prior to the Fairness Hearing.

13. In the event that: (a) the Court declines to enter an order of Final Approval, or enters an order of Final Approval that alters the Stipulation in any material respect, (b) declines to dismiss the Action with prejudice after Final Approval; (c) the order of Final Approval and dismissal with prejudice do not become Final, or (d) for any reason, the Effective Date does not occur; this Order shall be null, void and of no effect *nunc pro tunc*, and the Parties shall be restored in all respects to their respective positions existing prior to the execution of the Stipulation, subject to Paragraph O. 2 of the Stipulation.

14. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to proposed Class Members.

SO ORDERED this ___ day of _____, 2018.

The Hon. Gerald A. McHugh