

**DELAWARE'S ACCESS TO JUSTICE COMMISSION'S COMMITTEE ON
FAIRNESS IN THE CRIMINAL JUSTICE SYSTEM**

A Report on the Role of Police Practices in Continuing Racial Disparities in Delaware's
Criminal Justice System

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*Access to Justice Commission's Committee on
Fairness in the Criminal Justice System:
Equal Justice Initiative—Report on Police Practices*

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I. EXECUTIVE SUMMARY

The Equal Justice Initiative is a private, nonprofit organization that provides legal representation to indigent defendants and prisoners who have been denied fair and just treatment in the legal system. EJI litigates on behalf of juvenile offenders, condemned prisoners, the wrongfully convicted, poor people who were denied adequate representation, and others whose trials were impacted by racial bias or prosecutorial misconduct.

The history of racial inequality and economic injustice in the United States has created continuing challenges for all Americans and we believe more must be done to advance our collective goal of equal justice for all. EJI works to confront the history of racial inequality and economic injustice in the United States. EJI works with communities that have been marginalized by poverty and discouraged by unequal treatment. Additionally, EJI prepares reports, newsletters, and manuals to assist advocates and policymakers in the critically important work of reforming the administration of criminal justice.

EJI is excited to have been invited to participate in Delaware's Access to Justice Commission's Committee on Fairness in the Criminal Justice System. EJI was asked to consider a number of topics related to the criminal justice system in order to evaluate best practices that jurisdictions have employed to help address issues of racial disparities and economic injustice. EJI was also asked to remain sensitive to collateral impacts of public safety, while still addressing ways Delaware's criminal justice system could be reformed to reduce the disproportionate impact on people of color and the economically disadvantaged.

In this paper, EJI has explored the role of policing practices in the emergence and perpetuation of racial disparities in the criminal justice system and examined potential avenues of reform. EJI has studied academic papers, empirical data, governmental reports, and considered the progress that other jurisdictions have made. Based on our research, EJI recommends the following reforms:

- Hiring diverse and culturally competent, reform-minded leadership
- Implementing transparent and independent oversight
- Training officers to recognize and resist implicit biases
- Establishing non-enforcement community contact and partnerships
- Implementing non-punitive alternatives to arrest for low-level incidents
- Promoting officer wellness, morale, and safety

II. THE IMPACT OF THE MYTHOLOGY OF RACIAL DIFFERENCE ON POLICE INSTITUTIONS AND PRACTICES

In many respects today's criminal justice system continues to reflect many of the discriminatory customs, practices and laws created during the post-emancipation period to constrain the newly acquired freedom of African Americans. Former slave owners responded to emancipation by creating laws and penal practices targeting African Americans as a guise to imprison and re-enslave African Americans in a system of convict leasing once formal slavery had ended, and the strategy succeeded. Following the period of re-enslavement, government officials and police in particular either directly participated or were complicit in the widespread terrorization of African Americans through the lynching of over 4,000 African Americans between 1877 and 1950.¹ The police and the criminal justice machinery of the day were part of a larger, centuries-old system of apartheid that would remain in place for decades, eventually once again becoming formally embedded in the law as Jim Crow segregation.

Over time, the use of the criminal justice system as a tool for controlling African Americans became less overt but continued nonetheless. The narrative created to sustain slavery—that black people were somehow different and inferior—continued to inform the evolution of the criminal justice system and indeed undergirds the widespread racial disparities and system of mass incarceration evident today. “Race, whether consciously or unconsciously, affects every discretionary point in the criminal justice system.”² Only 13 percent of the U.S. population is African American while 40 percent of incarcerated prisoners are black. Black men are six times more likely to end up behind bars when compared to white men, and one of every three black male babies born in 2001 can expect to spend time in jail or prison. Despite the fact that many men and women currently serving as police would not likely consider themselves prejudiced, police work within institutions that, to a great extent, continue to perpetuate and embody old, racially motivated ideologies,³ albeit in much more insidious ways.

In addition, police are operating in minority communities that have experienced degradation, trauma, and exploitation throughout the entire history of this country. In particular, African American communities have endured “two hundred fifty years of slavery, ninety years of Jim Crow, sixty years of separate but equal, [and] thirty-five years of racist housing policy.”⁴ Yet, policing institutions, though appropriately oriented toward enhancing public safety, are nevertheless often structured in ways that fail to take this history and its

modern day effects into account.

A. Modern Incarnation of the Myth

The modern effects of a history of racial discrimination and bias can be seen in former Jim Crow states like Delaware. During the era of Jim Crow, a host of overt, racially discriminatory policies mandating segregation in education, public accommodations, transportation, and social policies were designed to enforce and maintain the existing racial hierarchy by limiting the availability of resources to people of color. Segregation in public grade schools “lay near the top of the white supremacist hierarchy of racial preferences”⁵ because integration would have offered African American children access to improved educational resources – the key to greater social and economic equality – and therefore represented the greatest threat to white supremacy.

African Americans in Delaware faced particular challenges. Delaware’s Constitution of 1897 established a system of public schools but required that “separate schools for white and colored children be maintained.”⁶ Delaware then became the only state that limited funding for African American schools to taxes levied on African Americans only.⁷ Delaware quickly “‘sank to last place’ among the states ‘in the education of its young people.’”⁸ This history and its contribution to dramatic social and economic disparities is in part what led African Americans like Louis L. Redding to begin challenging segregation in public schools. Redding eventually submitted a detailed comparison of the disparities among black and white schools to the Delaware Supreme Court, and Chancellor Steitz was unable to avoid the conclusion that black schools were inferior to white schools in nearly every respect.⁹ These cases paved the way for the decision in Brown v. Board of Education, and the two Delaware cases covering the history of racial disparities in Delaware’s schools were among the six cases explicitly considered by the U.S. Supreme Court in reaching its decision.

Despite the Brown decision, Delaware remained resistant to integration. In southern Delaware white opposition to desegregation was nearly unanimous.¹⁰ In 1954, thousands of angry white people demonstrated against desegregation in Milford, Delaware, and consequently schools in southern Delaware did not begin the process of desegregation until at least 1960.¹¹ In fact, the state of Delaware did not fully desegregate its public schools until 1978, nearly a quarter-century after Brown.¹² When Delaware’s desegregation court order expired in 1996, segregation in public schools began rapidly increasing, in some locations by more than 20 percentage points in the first five years after expiration.¹³ Additionally,

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explicit connections between racial discrimination in schools and the racially biased system of mass incarceration have developed in Delaware. Today, Delaware refers students with simple disciplinary problems to the police at the second highest rate in the country, referring 15 per 1000 students, more than twice the national average.¹⁴ In most states, schools refer people of color to police at rates that are disproportionate to their enrollment numbers.¹⁵

Deliberate discrimination in the housing market resulting in hyper-segregation in many American cities, including those in Delaware, has magnified the disadvantages African Americans face as a result of chronic, historical disparities in schools and public accommodations. From the 1930s to the 1960s, African Americans were largely barred from the housing market.¹⁶ The Federal Housing Administration deliberately ensured that the American home mortgage industry jointly participated in refusing to back home mortgages in neighborhoods where any black person lived, substantially limiting African American home ownership and confining black people to dilapidated neighborhoods.¹⁷ As income inequality widened in the 1970s and poverty became more concentrated in the inner-city following widespread changes in the economy, racialized housing segregation magnified these effects and concentrated poverty even further in a few isolated minority communities.¹⁸ Accompanying any such dramatic increase in poverty are reduced purchasing power, increased need for social services along with decreased ability to pay for them, high rates of family disruption, increased hopelessness and propensity for crime, deterioration of the housing stock, higher rates of mortality, and decreased education quality.¹⁹ The result is the creation of a set of self-reinforcing detrimental circumstances and criminogenic conditions that would be difficult for anyone born into such circumstances to escape.

This long history of government policies created an American “underclass” that continues to exist today; this is but a snapshot of the set of “cumulative disadvantages” currently facing isolated minority communities.

B. Impact on Criminal Justice

People and communities facing structural, racialized inequality do not have access to the financial, social, and community resources necessary for responding to increased incidence of mental health problems, drug addiction, persistent unemployment, and hopelessness that invariably emerges in such communities. For instance, the National Poverty Center reports that “residents of a predominantly black or Hispanic neighborhood have access to roughly half as many social services as those in predominantly white

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neighborhoods.”²⁰ In many low-income communities, police have filled this void by default and become first responders to social problems outside their domain of expertise.²¹ Consequently police often resort to arrest and prosecution in response to such problems, though such blunt tools are often harmful, counterproductive and more costly than other solutions. The result is that low-income minority communities receive more focused attention from the police and often suffer disproportionate and unnecessary arrest and punishment.

Police forces have generally been ill-equipped to act as social workers, interceding and tackling complex social problems while at the same time attempting to maintain public safety. In order to more effectively respond to complex criminogenic conditions and reduce racial disparities, cities and towns must acknowledge that police and the criminal justice system function optimally when operating in concert with a web of well-functioning schools, social services, institutions and community organizations capable of effectively responding to social problems and undermining root causes of crime. However, given that such ideal circumstances are often non-existent, police departments aiming to reduce racial disparities must necessarily become better equipped to recognize and respond to problems that require mental health, medical, or some other type of intervention short of arrest and prosecution.

C. Unique Role of Police

Developing effective policing strategies is only one dimension of a broader set of solutions for reducing racial disparities in the criminal justice system and the plague of poverty and marginalization that disproportionately affects communities of color. Even so, as a study published by the Brennan Center for Justice recently pointed out, police are often in the unique position to make the initial decision about who becomes intertwined with the criminal justice system in the first instance.²² A member of the judiciary told the study’s authors that the number “of misdemeanor and drug cases in [the] courts are *driven by police practices*.”²³ Police department policies, unconscious bias among individual police officers, and officer training and backgrounds, among other factors, all affect whom officers choose to stop, how they treat those they stop, and whether the stop results in arrest or other action.

Police thus continue to bear significant responsibility for racial disparities in the criminal justice system. For example, African Americans are nearly four times more likely to be arrested for drug sales and nearly three times as likely to be arrested for possession, despite the fact that white people are more likely to sell drugs and just as likely to consume them.²⁴

Additionally, police play a unique role in our society. As officers charged with the

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duty to enforce and uphold the democratically enacted laws of the state, in many respects police become representatives of our democratic system and ideals. As such, it is imperative that police avoid interacting with communities in an oppositional, hostile manner – as warriors charged with making arrests and seeking criminal prosecution. Instead, department policies and police officers should represent and embody the ideals and principles our society aspires to protect, including justice and equality under the law. In carrying out their duties in communities that have for centuries been marginalized by the legal power of the state, police officers should consider their unique position of power and influence and carry out their duties with a sense of responsibility to partner with communities to acknowledge the great wrongs of the past and to reverse historical trends and make neighborhoods more equal, just, and safe.

III. INVESTING IN QUALITY POLICE PERSONNEL

A. Recommendation: Hire strong, effective leaders committed to progress on the issue of racial justice.

Many of the recommendations set forth in this report require a significant amount of coordination and communication among police chiefs, commanders, sergeants, and lieutenants, and only where leaders are steadfastly committed to making progress on this front is success achievable. In almost any context, bringing significant change to an institution is a difficult task. Corporate executives acknowledge that in the business world, 70% of all change initiatives fail.²⁵ Some academics suggest that the high rate of failure exists because leaders become distracted by the number of strategic choices and options available for achieving the desired change and the goal becomes “muddled” in the process.²⁶

Thus, the police chief and his or her leadership team will need to develop a clear set of goals and an effective communications strategy for delivering the vision for institutional change to the entire department. The leadership team should also provide a detailed road map for how to get there. The chief is also responsible for developing personnel policies that ensure the department hires a diverse group of candidates who reflect the communities they will serve and embody the temperament and ideals the department aims to reflect. Training both new and existing officers in new protocols and priorities is also the responsibility of department leadership, and clear and effective communication is crucial during this stage. Finally, reducing disparities will require a leader who is willing to listen, take account of the views of community members, and adjust accordingly as new policies and protocols are

rolled out.²⁷

B. Recommendation: Police departments should hire a diverse group of officers who represent the demographics of the communities they will police and, ideally, are from those communities.

In the past, neighborhoods had more authority and control over criminal law enforcement in their communities, but over the past sixty years, crime has become more concentrated in the inner-city while a sizeable majority of people have moved to neighborhoods where crime is given little thought.²⁸ The result is that the people with the power to elect those empowered to convict and punish do not live in neighborhoods that force them to confront the effects of crime and aggressive policing on a regular basis. This mismatch of power and lack of understanding, between those who suffer the consequences of crime and those with the political power to help determine how officials respond to it, yields racially skewed results. “Racial and ethnic minorities are underrepresented by a combined 24 percentage points on average when each police department’s sworn officer demographics are compared with Census estimates for the general public.”²⁹

Although police officers are not elected, one complaint in the aftermath of several police shootings across the country has been that the police officers don’t look like the people they are policing and lack an understanding of the people and communities in which they work. Hiring capable officers who more accurately represent the demographics of the community and perhaps grew up in those communities in which they’ll work would yield greater understanding and empathy between police and the public and would begin the process of realigning the power of law enforcement with the actual communities police serve. Not only would this result in the reduction of racial bias but would foster more effective policing and yield enhanced public safety in the process.

C. Recommendation: Police departments should promote officer wellness and safety.

The safety and wellness of police officers is a critical goal in itself, as well as an essential component of promoting public safety and building morale among law enforcement personnel. According to the Report of the President’s Task Force on 21st Century Policing, “[t]he wellness and safety of law enforcement officers is critical not only for the officers, their colleagues, and their agencies but also to public safety.”³⁰ Studies have shown, and

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common sense suggests, that “[o]fficers who are mentally or physically incapacitated cannot serve their communities adequately and can be a danger to the people they serve, to their fellow officers, and to themselves.”³¹

The Task Force issued two recommendations for how law enforcement agencies can promote officer wellness and safety. These recommendations include:

1. “Encouraging and assisting departments in the implementation of scientifically supported shift lengths by law enforcement”; and
2. “Expanding efforts to collect and analyze data not only on officer deaths but also on injuries and ‘near misses.’”³²

Where officers are sleep deprived due to long shifts and experience poor physical and mental health, the threat to public safety increases. Dr. Bryan Vila, who is a leading expert on the impact of sleep-deprivation on police performance, has found that “sleep deprivation contributes to officers’ irritability with the public and inability to maintain calm in situations due to diminishing attentiveness.” He also found that sleep deprivation “impairs physical and cognitive abilities” and “sets up a vicious cycle: fatigue decreases your ability to deal with stress and stress decreases your ability to deal with fatigue.”³³

The promotion of wellness and safety should occur at every level of an agency and could include: providing each officer with “individual tactical first aid kits and training as well as anti-ballistics vests”³⁴; adopting policies that “require officers to wear seat belts and bullet-proof vests”³⁵; training officers on nutrition; ensuring that officers remain physically fit and have access to mental health services that can help them deal with depression, job-induced trauma, and post-traumatic stress; and providing officers with opportunities to further their education.³⁶

Law enforcement agencies should, as part of promoting officer wellness, encourage police officers to further their education and support them in the process of doing so. The Report of the President’s Task Force notes that “many believe that a higher level of required education could only raise the quality of officer performance.”³⁷ In addition, law enforcement agencies and personnel also benefit from “a diverse range of officers who bring their cultures, languages, and life experiences to policing.”³⁸

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In all of the aforementioned ways, police departments can begin to promote officer wellness and, in so doing, bolster the safety of both officers and the public.

D. Recommendation: Police departments should train officers to understand how implicit bias operates and offer potential methods for identifying and resisting its impact.

According to Jessica Eaglin and Danyelle Solomon, “[e]veryone has unconscious and unintentional biases that affect their understandings and actions. These biases may affect the decisions of criminal justice actors without their awareness, and result in racial and ethnic disparities.”³⁹ For example, recent research reveals that “[b]lack boys as young as 10 are viewed as older and less innocent than their peers among a sample of police officers from large urban areas.”⁴⁰

Police stops serve as a helpful illustration. There are two types of stops police officers can make: low-discretion stops and high-discretion stops.⁴¹ A low-discretion stop occurs when an officer has very little discretion to stop a vehicle or person, such as when a car runs a red light driving 10 miles per hour over the limit.⁴² Only about 25% of police stops are low-discretion stops.⁴³ That vast majority of stops conducted by officers are high-discretion stops.⁴⁴ High-discretion stops typically involve minor infractions “for which an officer has ample discretion” to elect whether or not to stop a person or vehicle.⁴⁵ An example of a high-discretion stop is an officer conducting a Terry stop because a person “looks suspicious.”⁴⁶

According to Northeastern University School of Law Professor Deborah Ramirez, high-discretion stops “invite both intentional and unintentional abuse.”⁴⁷ “Police, obviously, are just as subject to [society’s] racial and ethnic stereotypes . . . as any other citizen. Unless documented, such stops create an environment that allows the use of stereotypes to go undetected.”⁴⁸ The fact that about 75% of stops are high-discretion stops is particularly concerning due to the prevalence of racial profiling within law enforcement organizations. Profiling “refers to police organizations’ creating and acting off of a set of characteristics, which can include race, used to describe a typical offender or offending population.”⁴⁹ Profiling “has really become a tool for criminalizing certain segments of the population.”⁵⁰ This is particularly true in the case of “out-of-place profiling.” If a person is present in a place or neighborhood where they do not match the typical type of customer or resident, law enforcement officers “assume they are not [customers] or residents.”⁵¹ “Thus minorities who are out of place are viewed as symbols of danger in majority communities.”⁵²

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In addition to profiling, cognitive bias (implicit bias) and stereotyping produce a “disproportionate number of stops” of racial minorities. As a means of simplifying situations in order to make quicker decisions in the presence of “complex flows of information,” human beings reduce information into “social categories.”⁵³ When one is not familiar or acquainted with another person, “we tend to focus on obvious characteristics,” such as race.⁵⁴ Patrolling officers are asked to quickly evaluate their surroundings, which are full of complex flows of information. Without training to identify their own implicit biases and suppress the urge to act based on these biases, officers will be at risk of attributing “the symbol of dangerousness” to minorities. And the disproportionate attribution of dangerousness to minorities leads to disproportionate representation of minorities in the criminal justice system. There is, however, training available to law enforcement officers to teach them to police more fairly and impartially, better allowing officers to resist the urge to assume that members of marginalized communities and communities of color are dangerous (see *infra*). Undergoing implicit bias training can help law enforcement officers reduce racial and ethnic disparities in policing.

*Case Study: Pursuing Greater Fairness and Impartiality Through Implicit Bias
Training – Las Vegas, Nevada*

A 2012 review of officer-involved shootings in the Las Vegas Metropolitan Police Department by the United State Department of Justice’s Office of Community Oriented Policing Services recommended that LVMPD conduct fair and impartial policing training (implicit bias training).⁵⁵ This DOJ review found that the community perceived implicit bias during incidents of deadly force. The review also detailed that 70% unarmed suspects shot by LVMPD officers were black and that 66% of officer involved shootings involved black suspects.

Specifically, the 2012 DOJ review recommended that LVMPD initiate new training for all officers to “promote a controlled response from the officers that overrides unconscious bias.” To facilitate the creation of such a program, DOJ recommended that LVMPD take seven steps:

1. Work with Human Resources/Personnel and Fiscal staff to determine the necessary resources and a means of conducting this training.
2. Identify appropriate trainers [. . .].
3. Develop a training plan to train the officers, supervisors, and

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commanders.

4. Incorporate this training into training academy curriculum for all future hires, recruits, and supervisors schools.
5. Work with Nevada Peace Officers' Standards and Training (POST) to have the course certified for future training reimbursement.
6. Develop and approve measures of performance for the trainers, students, and supervisors.
7. Develop and implement an evaluation plan for fair and impartial policing and make appropriate changes in training delivery based on evaluations and feedback [. . .].

According to fair and impartial policing training officer, Marla Stevens, herself a third generation, fifteen year police officer, “[Y]ou know, this started with the officer-involved shootings that we had in 2011. The fact is, did we shoot more unarmed black men than we did white? Absolutely, we did. And we put those numbers up there and show them to our officers and say, these are the stats. You can’t argue with those numbers.”⁵⁶ In 2011, the city paid out \$1.7 million to the family of Trevon Cole, an unarmed black man, shot and killed by an LVMPD officer in 2010.⁵⁷ While there has not yet been any published analysis of the effects of LVMPD’s fair and impartial policing training, the officers, themselves, seem to be seeing results. Officer Brett Brosnahan, who is an active shooter instructor for LVMPD, stated, “Biased is, you know, maybe I’ve stopped three or four guys that look exactly like this man. And every time I’ve stopped them, I found guns or dope on them. So you just put the trait from the person that was guilty onto the person that’s innocent. . . . It’s scary because it’s not fair. It’s not fair for me to assume that this guy’s going to have the same background. I mean, he might be the CEO of a company, just out for a walk, and didn’t want to walk to the crosswalk. I don’t know.”

Case Study: Instituting anti-bias training for police officers – Kent, Washington

The City of Kent Police Department has recently launched an anti-bias training program for police officers called, “Fair and Impartial Policing.”⁵⁸ The anti-bias courses are taught by Lorie Fridell, who is a professor of criminology and who runs a business hosting workshops on anti-bias policing. According to Fridell, “the demand for Fair and Impartial Policing started to increase in 2013...and then with Ferguson, absolutely, we’re getting a lot more requests.”⁵⁹

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The Fair and Impartial Policing curriculum is geared towards “teach[ing] police officers to recognize their own implicit biases.” Through role playing and simulations, officers are alerted to their tendency to “jump to the wrong conclusions about who the real troublemakers are.”⁶⁰

While the efficacy of this training program and others is still being evaluated, these efforts appear very promising. According to researcher Joshua Correll, “there just hasn’t been enough research yet to really judge the long-term effects of bias training on police.”⁶¹ However, law enforcement officials and community members in the City of Kent see the program as a positive step towards eradicating racially biased policing.

IV. IMPROVING ACCOUNTABILITY AND OVERSIGHT

A. Recommendation: Police oversight must be transparent and independent.

The lack of transparent and independent oversight of police actions often allows racially biased policing practices to go undetected and unaddressed.⁶² Oversight mechanisms—such as citizen oversight bodies—that serve as a check on police conduct can reduce racial disparities in the criminal justice system by weeding out and deterring those discretionary decisions on the part of the police that are motivated by racial bias or that result in racially biased policing.⁶³

Scholar and author Jack Greene has observed that, “because police draw their authority and legitimacy from the communities they police, transparent and independent review of this sacred trust is a must.”⁶⁴ Greene outlines four models of independent and transparent police oversight, which include: (1) a fully external investigation and review model; (2) an internal-external review model (whereby police departments internally review police (mis)conduct while an external review is conducted by a third independent party); (3) a review conducted by professional monitors who work with, but are independent of, the police; and finally, (4) a hybrid model that incorporates elements of all three aforementioned models.⁶⁵ Each of these models will be explored in greater detail below.

(1) Fully External Review Model

The fully external review model requires a third party who is independent of the police department to handle citizen complaints concerning police (mis)conduct. This third party

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“conducts investigations and recommends discipline to the head of the police department or to a city official, such as the Mayor or City Manager.”⁶⁶ The strength of this model lies in the third party’s independence from the police, which carries with it the greater likelihood that racially biased policing practices (and outcomes) will be detected and deterred. However this model is not without weaknesses. According to researchers Jack McDevitt, Amy Farrell and W. Carsten Anderson, “fully external models can quickly become overextended and many do not finish their investigation of complaints in a timely manner.”⁶⁷ To prevent complaints from becoming backlogged, “some jurisdictions have hired independent investigative and administrative staff” which “require a significant investment of resources.”⁶⁸ Another challenge is the hostility that may develop between independent review boards and the police departments under their scrutiny.⁶⁹ Such animosity may lead to the police department’s rejection of the review board’s findings

(2) Internal-External Review Model

Under the internal-external review model, complaints against police are processed and investigated by the police. Only after this internal review process is complete does an independent body review the police investigation and findings.⁷⁰ Like the fully external review model, the strength of the internal-external review model is the presence of an independent third party, which reviews investigations and complaints against the police. Meanwhile, the weakness of this model lies in the fact that the independent third party does not conduct its own independent investigation, but rather must rely on the findings provided by the police.

(3) Professional Review Model

The professional review model requires that an external party (i.e. the “professional”) to review investigations into police misconduct and issues recommendations.⁷¹ While such monitors “often take complaints of misconduct directly,” in some instances “the monitor actually conducts the investigation” into allegations of police misconduct.⁷²

The strength of the professional review model is the independence of the third party monitors as well as their training and expertise in the investigatory process. In addition, such parties “traditionally have unfettered access to all material and relevant investigations or review”, which is not necessarily the case with the other models discussed above.⁷³ One potential weakness with this model is the potential for monitors’ independence to be

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jeopardized in the absence of an obligation to report directly to members of the community.⁷⁴

(4) Hybrid Review Model

Finally, the hybrid review model incorporates elements of the aforementioned models. According to McDevitt, Farrell and Anderson, “[h]ybrid models of review often star[t] with one component and ad[d] elements as the needs of the organization or the community chang[e].”⁷⁵

A common thread throughout each of the models outlined above is the central role that the community plays “in the process of reviewing questionable police actions, improving communications between police and the public, appealing the outcomes of police investigations, and creating regular reporting mechanisms to the wider public about police misbehavior and actions taken to rectify such behavior.”⁷⁶ McDevitt, Farrell and Anderson also identify “six key principles that are common” among all successful police oversight models. These include: (1) “The community has a role in complaint review and oversight”⁷⁷; (2) “Alternate decision-making structures that work completely outside the department are complex and costly”⁷⁸; (3) “Civilian oversight can help increase and improve communication with the public”⁷⁹; (4) “Civilian oversight works best when it is triggered automatically, in addition to appeals from complainants”⁸⁰; (5) “Models of civilian oversight should provide regular reports to the public, which are transparent, rigorous and credible”⁸¹; (6) “There is no one best model.”⁸²

*Case Study: Making Complaint Processes Accessible and Transparent –
Camden, New Jersey*

The Camden County Police Department’s online complaint initiation process represents one way in which the principles outlined above might be implemented. The Office of the Camden County Prosecutor oversees this process. Citizens can file grievances against police officers with the Prosecutor’s Office, which is responsible for investigating and prosecuting police misconduct.⁸³ State law requires that all police departments “maintain an internal affairs function” and “release reports to the public summarizing allegations received and the conclusions of the subsequent investigations.”⁸⁴ In order to file an internal affairs complaint with the Special Prosecutions Unit, one need only email Angela Seixas at aseixas@ccprosecutor.org. Anonymity is permitted, which provides complainants with privacy and encourages complaint making without the fear of retaliation.⁸⁵

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Camden County's online (and anonymous) complaint process differs from Wilmington's complaint process, which has required complainants "to appear in WPD's headquarters during weekdays between the hours of 8 a.m. and 5 p.m., where they are greeted by a WPD supervisor."⁸⁶ Citizens in Wilmington have often been discouraged from reporting police misconduct due to the fact that "would-be complainants often encounter the officers that they are there to file a complaint against" and the supervisor with whom they meet "asks questions in a way that appears to discourage the citizen from filing complaints."⁸⁷ While the efficacy of Camden County's new online and anonymous complaint process in reporting and reducing racial disparities in policing is not yet certain, it shows great promise for improving officer accountability by detecting and deterring racially biased policing and other forms of officer misconduct.⁸⁸

B. Recommendation: Police officers should issue either business cards or receipts containing their identifying information to individuals who they stop on the street but do not arrest.

Racially biased policing may go undetected, unaddressed, and undeterred where the victims of such practices are unable to identify the officer(s) responsible for their detention, however brief. Recognizing this, the Final Report of the President's Task Force on Twenty-First Century policing recommended that "[l]aw enforcement agencies should adopt policies requiring officers to identify themselves by their full name, rank, and command (as applicable) and provide that information in writing to individuals they have stopped."⁸⁹ The Final Report's recommendation goes further, stating that, "[i]n addition, policies should require officers to state the reason for the stop and the reason for the search if one is conducted."⁹⁰ One example for how to achieve this "is for law enforcement officers to carry business cards containing their name, rank, command, and contact information that would enable individuals to offer suggestions or commendations or to file complaints with the appropriate individual, office, or board. These cards would be easily distributed in all encounters."⁹¹ Measures such as these not only provide a check on police discretion but may also help to weed out and deter racially biased policing practices.⁹²

Case Study: Accountability through Stop-Search Receipts – The United Kingdom and New York City

Following an inadequate and racially insensitive police response to the racially motivated murder of black teenager Stephen Lawrence in Eltham, London in 1993, police

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officers in the United Kingdom were required “to give receipts to every person they stop in the street” in an effort to curb racially biased policing practices.⁹³ These “receipts” documented the skin color, name, and address of those who were stopped by police but neither searched nor arrested. According to The Daily Mail, the lawmakers responsible for the change hoped that it would “help ethnic minority communities have greater confidence in the police.”⁹⁴

The New York City Police Department reportedly began to issue stop-and-frisk “receipts” on September 21, 2015.⁹⁵ These receipts “include a section for the officer to scribble down his or her reasons for stopping/frisking, as well as contact info for the Civilian Complaint Review Board (the CCRB, an external watchdog) and the NYPD’s own Internal Affairs Bureau.”⁹⁶ According to Richard Emory, the head of the CCRB, these receipts “require the officer to articulate objectively the reasons that the stop was done...and to be much more respectful and much more proper about the way he or she goes about the stop, question and frisk.”⁹⁷ This reform comes a little over two years after a federal court held that the NYPD’s racially discriminatory stop and frisk program was unconstitutional and represents a promising step forward in the effort to eradicate racial profiling and biased police decision making.

C. Recommendation: Police officers should be required to wear body cameras.

The use of body cameras provide another means by which racially biased policing can be identified and deterred. According to the Final Report of the President’s Task Force on 21st Century Policing, “[P]resent day technologies should also be employed more often” including “body worn camera videos” which can “increase access to evidence-based research and other sources of knowledge.”⁹⁸ However the Final Report also warned that the issue of body worn cameras is “complex.”⁹⁹ In particular, the Final Report noted that “[a]lthough body-worn cameras can offer many benefits, they also raise serious questions about how technology is changing the relationship between police and the community.” This is because “[b]ody worn cameras not only create concerns about the public’s privacy rights but also can affect how officers relate to people in the community, the community’s perception of the police, and expectations about how police agencies should share information with the public.”¹⁰⁰

Notwithstanding these concerns, body worn cameras “help police departments ensure

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that events are also captured from an officer's perspective"¹⁰¹ in an age when police encounters with the public can be captured by anyone with a cell phone. Body worn cameras are also important because they provide objective visual evidence about a police officer's encounters with the public and expose abuses that might otherwise remain concealed. However, in order for body cameras to be effective, police departments must create policies of transparency that ensure police indeed activate the cameras at the appropriate times and are prevented from retaining, hiding or destroying the footage in the event that the footage becomes relevant.

*Case Study: Providing Police Accountability and Transparency Through Body
Cameras – Boston, Massachusetts*

On September 17, 2015, the Boston Police Commissioner, William Evans, announced that Boston police officers would soon be required to wear body cameras. This effort was hailed by the Boston Police Camera Action Team, the Boston Branch of the NAACP, and the Massachusetts ACLU as a commendable “step in the right direction toward transparent, reliable and accountable policing in Boston.”¹⁰² According to Black Lives Matter activist, Daunasia Yancey, “[r]acial disparities in policing are a serious problem in Boston” and “body cameras are one part of a larger effort to bring transparency, community oversight and accountability to policing in Boston.”¹⁰³

D. Recommendation: Police departments should eliminate quotas that create perverse incentives to stop and arrest individuals and instead promote data collection that could assist in highlighting features of the criminal justice system with the greatest racially disparate impacts and potential for reform.

In its 2015 investigation of the Ferguson Police Department, the U.S. Department of Justice uncovered rampant racial bias within the Department. One of the recommendations that the DOJ put forward as a step towards eliminating racial disparities in Ferguson's criminal justice system included “prohibit[ing] the use of ticketing and arrest quotas, whether formal or informal.”¹⁰⁴ The New York Times reported in March 2015 that police supervisors in Ferguson “insisted that officers hit ticket quotas and reorganized the shift schedules to help hit them.”¹⁰⁵ This quota system was part of the reason black people in Ferguson accounted for 85% of all traffic stops, 90% of those ticketed, and 93% of those arrested over a two-year period.¹⁰⁶ With respect to minor offenses over which Ferguson police enjoyed

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substantial discretion—such as jaywalking—black people in Ferguson accounted for 95% of those charged.¹⁰⁷

The Police Executive Research Forum has also documented the relationship between quota systems and racially biased policing. In a 2001 report entitled “Racially Biased Policing: A Principled Response,” the report’s authors concluded that enforcement quotas create “organizational pressures on the police that contribute to racial bias, or perceptions of bias, in policing.”¹⁰⁸ For example, the report noted that in some agencies, “[s]ome newer officers, eager to establish a reputation as being ‘active,’ see high-volume enforcement activity as the path to career advancement.”¹⁰⁹ Moreover, “organizational pressures” such as quotas “can lead some officers to conclude that conducting a lot of stops and searches will yield a lot of arrests and contraband seizures. Some will go on to conclude that they have a better chance of getting the results they want if they stop and search minorities, a conclusion not supported by the evidence.”¹¹⁰ Eliminating quotas therefore represents a substantial step towards removing the incentives for policing in a racially biased manner, at no cost to public safety.

*Case Study: Monitoring police discretion through data collection – California
& New Jersey*

Instead, police departments should focus on collecting data that can help to reduce racial disparities in the criminal justice system by creating widespread awareness of police practices that have a disparate racial impact. According to the Sentencing Project, “[e]fforts to address the problem of racial profiling can begin with documentation of the problem through data collection.”¹¹¹

Two jurisdictions—New Jersey and San Diego—have used data collection to track racial biases in their criminal justice systems. In 2000, police officials in both New Jersey and San Diego “require[d] that the race and ethnicity of all persons stopped by the police be recorded, along with other information that is routinely collected.”¹¹² The goal in collecting this data was “to determine whether, where, and when practices are disparate and point to areas for improvement.”¹¹³

Efforts to collect and track policing practices revealed that between 2011 and 2012 “African-Americans were arrested at some of the highest rates in the country” in two New Jersey counties—Monmouth and Ocean counties.¹¹⁴ The Monmouth County Sheriff’s

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Department “had the most arrests of the 19 police agencies in both counties” and “showed the greatest disparity.”¹¹⁵ While black people constitute only 7% of the county’s population, they comprised 44.5% of those arrested between 2011-2012.¹¹⁶ Meanwhile, “the Ocean County Sheriff’s Department reported that nearly 45 percent of its arrests in 2011-2012 were of African-Americans.”¹¹⁷

In California the California Department of Justice recently released data that demonstrated stark racial disparities in California’s criminal justice system. While African Americans constitute merely 6% of California’s population, they are 17% of those arrested and 25% of those who die in custody.¹¹⁸ The data also revealed that black male juveniles who are subject to arrest “are booked into jail at a 25 percent higher rate than whites.”¹¹⁹

Data collection in California and in New Jersey have revealed stark racial disparities in policing. However, creating awareness is only the first step. Police departments must then leverage this information to take action. Some jurisdictions, like Eagle County, Colorado, are attempting to reduce disparities through community policing initiatives that build trust between residents and police officers, and by training police officers on anti-racism and implicit bias. These efforts are explored in greater detail below.

V. INCREASING TRUST AND LEGITIMACY IN THE COMMUNITY

Historically, many communities of color in the United States have distrusted and feared the police due to law enforcement’s role in perpetuating racial subjugation. The predecessors of modern-day police departments were slave patrols and night-watches, which were designed to monitor the movements and the behaviors of black and brown people.¹²⁰ Slave patrols also had additional functions. As author Victor E. Kappeler writes, they “helped to maintain the economic order” and “assist[ed] the wealthy landowners in recovering and punishing slaves.”¹²¹ Even after slavery’s abolition, law enforcement officers continued to perpetuate racial violence against black and brown people by participating in lynchings,¹²² and using force—oftentimes lethal—to terrorize, dehumanize and debase people of color.

Today, mistrust and fear of the police continue to pervade communities of color. The increased militarization of police forces fuels this mistrust and fear as neighborhoods are transformed into war zones, police officers into occupiers, and residents into enemies. According to a report published by the American Civil Liberties Union in 2014, “American policing has become unnecessarily and dangerously militarized, in large part through federal

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programs that have armed state and local law enforcement agencies with the weapons and tactics of war.”¹²³

A. Recommendation: Police departments should demilitarize.

The term “militarization” refers to the increased use by local police departments of the mechanisms of war. According to the ACLU’s 2014 report, “[f]or decades, the federal government has equipped state and local law enforcement agencies with military weapons and vehicles, as well as military tactical training, for the (often explicit) purpose of waging the War on Drugs.”¹²⁴

Police militarization creates a hostile climate in the predominantly minority neighborhoods where this phenomena is seen most vividly, and undermines residents’ trust in local law enforcement. At the same time, police militarization also undermines law enforcement’s trust in the communities that they are tasked with policing by transforming them into urban war zones. Where police officers fear and fail to understand the communities that they police, racially biased policing practices will persist and will ultimately hinder efforts to promote public safety.¹²⁵ Instead, “building trust between law enforcement agencies and communities are essential.”¹²⁶ Key to this trust-building process is the demilitarization of police forces. Rather than a military model, signaling the intent to befriend and partner with members of the community is a more productive approach.

B. Recommendation: Police departments should move away from military boot camp-based training models.

The seeds of a “warrior culture” are planted in many law enforcement agencies through recruit training.¹²⁷ Military boot camp is designed to produce “a warrior ready for battle and ready to follow orders and rules without question.”¹²⁸ But law enforcement officers are not military soldiers going into battle, rather, law enforcement officers should view themselves as members of the community as opposed to “occupying forces.”¹²⁹ Law enforcement training academy models based on military boot camps ingrain into the minds of new recruits that law enforcement is a battle between “us” and “them.”¹³⁰ Officers with an “us” and “them” mentality undermine the ability of law enforcement to gain trust and legitimacy in marginalized communities. Furthermore, law enforcement academy training based on military boot camp ignores the realities of day-to-day police work.¹³¹ “In reality, few officers working the street have consistent or even regular supervision.”¹³² Rather, patrol

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officers are tasked with using their own judgement and discretion to decide how to react to situations encountered while working in underprivileged communities. Given this reality, “critical decision-making . . . should be the goal of any training strategy.”¹³³ In addition to critical thinking, the focus of academy training should also be shifted to communication, relationship building and de-escalation techniques.¹³⁴

Many current law enforcement training models lack a focus on critical thinking, communication, and de-escalation skills. Instead, much academy training is centered around following the orders of superiors. As a result, a more “insidious” problem is born out of academy training.¹³⁵ Those without power (the recruits) “submit without question to the authority” of academy staff who have power.¹³⁶ In law enforcement academies, rule violations are frequently met with harsh verbal reprimands or with physical punishment, such as pushups or running extra laps.¹³⁷ Through utilizing a hierarchical power structure in the academy, law enforcement agencies risk that recruits will either consciously or subconsciously employ such power dynamics, after they graduate, while in the community.¹³⁸ Sue Rahr, who leads the Washington State Justice Training Commission notes the problematic nature of current military boot camp-based training models:

“Upon graduation, we send our newly trained recruits out into the community — they finally have power. Despite the way they were treated during their training, we expect them to treat the powerless people they encounter in the community with dignity and respect.”¹³⁹

By shifting the focus of academy training to critical thinking, communication, and de-escalation techniques, police officers will be less likely to act as “warrior cops” or abuse their authority. This in turn will allow for members of the community to gain trust and confidence in law enforcement officers.

C. Recommendation: Police departments should engage in truth and reconciliation with minority communities.

One of the most fundamental barriers to helpful and constructive engagement between police and minority communities is the failure to talk openly and honestly about the powerful narratives that shape how police and minority communities interact with one another. According to David Kennedy, “a profound transformation in community-police relations is possible” when the police and the community choose to address these narratives openly.¹⁴⁰

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Kennedy argues that police departments need to openly acknowledge the long history of slavery, lynching, Jim Crow and racial oppression that persisted for such a long time in large part because law enforcement sanctioned and enforced those policies and practices.¹⁴¹ When minority communities witness aggressive police practices today, it becomes difficult not to conclude that the police continue to represent a form of racial oppression. If this belief takes widespread hold in a community, no one is likely to work constructively with the police, even in the face of awful crime.¹⁴²

Similarly, Kennedy argues that some police hold false beliefs about the communities in which they work, assuming that certain communities fail to respond to rampant crime because the residents do not care about, or are complicit in the illegal activity. Before police are able to work alongside minority communities, many officers must engage with community members in a way that helps dispel these and other false notions. Facilitating racial reconciliation among police and the community has the capacity to break down barriers and help illuminate the true motives and concerns on each side. Effective community policing then becomes more viable.

D. Recommendation: Police departments should engage the community in their decision-making.

Policing necessarily involves a number of discretionary and subjective decision-making processes—including, but not limited to, who appears dangerous and what kind of behavior warrants arrest—which provide space for racial biases to operate. Where police departments engage communities in the process of decision-making, they may not only gain the trust of the community, but they may also become aware of racially biased policing practices that corrode their local legitimacy and undermine their efforts to promote public safety.¹⁴³

One way that police departments can begin to engage communities in their decision-making processes is to bring together residents and businesses who work with police to formulate strategies for making their communities safe and who review their efficacy.¹⁴⁴

E. Recommendation: Police departments should espouse a commitment to procedural justice.

In order to build the trust of the communities that they police and in order to enjoy

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local legitimacy, it is essential for police departments to embrace procedural justice. According to the Final Report of the President's Task Force, "procedurally just behavior is based on four central principles" including: (1) "Treating people with dignity and respect"; (2) "Giving individuals 'voice' during encounters"; (3) "Being neutral and transparent in decision making"; and (4) "Conveying trustworthy motives."¹⁴⁵

Procedural justice has both internal and external dimensions. Internal procedural justice "refers to practices within an agency and the relationships officers have with their colleagues and leaders,"¹⁴⁶ while external procedural justice "focuses on the ways officers and other legal authorities interact with the public and how the characteristics of those interactions shape the public's trust of the police."¹⁴⁷

Studies of internal procedural justice practices suggest that, "officers who feel respected by their supervisors are more likely to accept departmental policies, understand decisions, and comply with them voluntarily. It follows that officers who feel respected by their organizations are more likely to bring this respect into their interactions with the people they serve."¹⁴⁸ Meanwhile, key components of external procedural justice are "understanding and acknowledging human biases" and committing to "fair and impartial policing."¹⁴⁹

Procedural justice can be achieved in a number of different ways, including through: "implicit bias" and cultural sensitivity training; independent civilian oversight of police conduct; the adoption of a "community member" mindset rather than "warrior" mindset¹⁵⁰; recognition of police complicity in past and present injustices¹⁵¹; and processes that promote transparency and accountability.

Case Study: Improving communication with members of marginalized communities to gain the confidence of communities – King County (Seattle), Washington

Washington's King County Sheriff's Office teaches its officers to take the time to listen to citizens; explain what is going to happen and how the process works; and leave citizens with their dignity intact through implementing a LEED (Listen and Explain with Equity and Dignity) training model.¹⁵² The Washington County Sheriff's Office began using the LEED model in 2011 as a response to several incidents involving the use of force by and against law enforcement.¹⁵³ Through research and internal evaluations, the leaders of King County's law enforcement came to realize that public trust and confidence in law

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enforcement “directly impacts lawful behavior and the willingness of residents to work with the police to solve crime and improve neighborhood safety.”¹⁵⁴ New recruits, veteran officers, and supervisors must now all participate in LEED training.

LEED training follows three steps. First, LEED trainers work to “ensure that leaders and supervisors understand and embrace the principles of procedural justice and police legitimacy.”¹⁵⁵ Next, “each element of the LEED model is fully explored through “scenario-based adult learning methods.”¹⁵⁶ Through scenario-based learning, officers are better able to utilize the skills learned during training when they are out engaging with members of the community.

The elements of the LEED model are as follows: The “L” stands for “Listen”—officers are trained in ways to better to allow community members to “give their side of the story; give them voice, and let them vent.”¹⁵⁷ The first “E” stands for “Explain”—officers are trained to explain what steps they are taking, what the officers can and cannot do in the specific situation, and will happen next.¹⁵⁸ The second “E” in LEED stands for “Equity”—officers are trained to tell citizens why they are taking action.¹⁵⁹ Special attention is given to ensuring that officers learn to articulate reasons for taking action that are “fair and free of bias,” while displaying to community members that the officers took their input into consideration.¹⁶⁰ Lastly, the “D” in LEED stands for “Dignity”—officers are taught to both “act with dignity and leave with their dignity” intact.”¹⁶¹

As noted by King County Sheriff Sue Rahr and Seattle Police Chief John Diaz, “[b]y addressing these four critical human needs on every call, officers elevate the quality of the interaction and people are more likely to see police as helping rather than controlling.” Such positive interaction will help members of marginalized communities to view law enforcement officers as community members who can be trusted to ensure the community’s safety.¹⁶² While building and improving relationships between law enforcement and the community takes time and effort, it is important to remember that, just like any personal relationship, building trust and confidence happens “one interaction at a time.”¹⁶³ And once trust and confidence is built between law enforcement and marginalized communities, meaningful and effective partnerships can be built (see below).

F. Recommendation: Police officers should be trained to better communicate with members of marginalized communities.

Positive interactions with police officers increase public confidence in law enforcement.¹⁶⁴ The more positive interactions citizens have with law enforcement, the more they view police officers as part of the community.¹⁶⁵ Through facilitating positive interactions, police officers can come to be viewed by the community as community members instead of occupiers.¹⁶⁶ In their role as positive members of the community, police officers “operate[] . . . demonstrating empathy and employing procedural justice principles during interactions.”¹⁶⁷ On the other hand, if members of the community perceive an officer to be a “warrior cop,” then community members are more likely to feel that law enforcement is an “occupying force, detached and separated from the community.”¹⁶⁸ If officers are viewed as “warrior cops,” valuable opportunities to build trust and confidence with members of the community are wasted before the officer even attempts to engage in meaningful conversation.

Case Study: Partnering with marginalized communities to build trust – Eagle County, Colorado

In 2010, law enforcement authorities and local charities in Eagle County, Colorado started the Eagle County Law Enforcement Immigrant Advisory Committee. The purpose of this initiative was to “build trust between the police and immigrant community” as well as to “raise crime reporting” among undocumented immigrants and to “reduce victimization.”¹⁶⁹ Police Chief Dwight Henninger is co-chair of the committee and approached staff members at Catholic Charities about starting this program and getting neighborhood organizations—like the local Salvation Army—involved.¹⁷⁰ These community organizations “function as mediators between immigrants and the police for those who don’t yet feel comfortable enough to directly approach law enforcement.”¹⁷¹

According to Henninger, “[w]e felt [that] we needed to build on the trust levels between the immigrant community and law enforcement, and we felt that the best way to do that was to have well-respected leaders in the immigrant community from other organizations assist us in developing these trust levels because they already have this established relationship.”¹⁷² In order to build trust, the police department provided resources and participated in programs that informed immigrant communities about their legal rights, how the police department operates, and how to report crimes.¹⁷³ Interpreters facilitated

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interactions between immigrants and the police, and “[l]aw enforcement receives training as well on how to better communicate with non-English speakers, immigration law, and cultural information about the county.”¹⁷⁴

The Committee also facilitates positive non-law enforcement interactions between police and immigrant communities. For example, it organizes clothing and food drives “as well as outreach events like Shop-with-a-Cop and the Spanish Citizens Police Academy, which is a series of classes to help participants better understand the different aspects of law enforcement.”¹⁷⁵

As a result of this trust-building initiative, an increasing number of immigrants are directly calling the police to report crimes rather than working through intermediaries.¹⁷⁶ “Among the Hispanic population in Eagle County, crime reporting increased from 5.4 percent in 2010 to 7.9 percent in 2012.”¹⁷⁷ Additionally, arrest figures fell from 41.9 percent in 2010 to 33.1 percent in 2012 and victimization percentages fell from 22.2 percent in 2010 to 19.4 percent in 2012.¹⁷⁸

VI. ADOPTING COMMUNITY POLICING MODELS

A. Recommendation: Police departments should engage in community policing.

Community policing models are those that engage members of the community in the process of promoting public safety. Such models seek to foster proximity between police officers and the communities that they are tasked with policing in an effort to build mutual cooperation, fairness, and trust. According to the Report authored by the Sentencing Project, community policing models have the potential to reduce racial disparities in the criminal justice system by “creat[ing] structures and processes... that encourage the participation of community leaders and residents in defining the major concerns of the community and in designing and implementing problem-solving strategies to address them.”¹⁷⁹

Community policing models recognize that effective policing is about relationships, not tactics. A healthy, robust network of relationships among police and community members not only improves public safety but reduces the risk of racial tension and bias. The model is a clear shift away from older, reactionary models in which criminal activity in a given community triggers an aggressive police response followed by a large number of arrests. The

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model recognizes that type of response as ineffective. The criminal justice system's ability to impose punishment is far less effective at deterring crime than the kind of robust informal social control that is possible when the community works together, alongside and in conjunction with police, to respond to criminal activity.

While there are myriad community policing models, some of the elements common to all of them include: engaging the community in non-law enforcement activities; implementing alternatives to arrest for low-level offenses; and fostering proximity and familiarity between the police and the communities that they serve.

Case Study: A multifaceted interagency approach – Cincinnati, Ohio

According to the 2010 U.S. Census, Cincinnati's population was 296,943.¹⁸⁰ The population was 49% white, 45% black, and 3% Hispanic. Cincinnati's population density was 3810 inhabitants per square mile.¹⁸¹ 25.4% of households had children under the age of 18.¹⁸² The median household income was \$33,708.¹⁸³ Cincinnati created the Cincinnati Initiative to Reduce Violence (CIRV) in 2007.¹⁸⁴

The Cincinnati Initiative to Reduce Violence (CIRV) is a focused-deterrence (“pulling levers”) approach designed to reduce gang and gun violence.¹⁸⁵ The CIRV approach follows the National Network ground violence reduction strategy.¹⁸⁶ CIRV contacts gang members through various channels; including: in prison, jail, or halfway houses; through home visits or in the streets; and through call-ins. CIRV's message, particularly during early meetings with young people is that being involved in firearms-related violence often results in law enforcement paying closer attention to the gang and to individuals within this game, leading to criminal consequences.¹⁸⁷ While CIRV's aim is to reduce firearms-related violence (deterrence), its best feature allows for community stakeholders to partner with law enforcement to offer “services and alternatives” to young people who are members of gangs, while “articulat[ing] community norms against violence.”¹⁸⁸

In May 2008, Cincinnati's police department, for the first time, initiated efforts specifically to address gang violence.¹⁸⁹ These initial efforts, referred to as the “Tailband Investigation,” as the investigation specifically targeted Cincinnati's Northside Tailband gang, utilized a social network analysis (SNA).¹⁹⁰ SNA “is a discipline that grew out of sociology to map and measure relationships and flows between individuals or groups.”¹⁹¹ While SNA is rarely used by law enforcement, in this case, this analysis helped to “serve[]

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as the core template” for all gang investigations by Cincinnati’s police department.¹⁹²

Through this analysis, by April 2009, the Cincinnati Police Department was able to discover that the “Tot Lot Posse” were involved in 25% of firearms-related violence in Cincinnati’s West End.¹⁹³ As Cincinnati police continued to gather evidence against the Tot Lot gang, the police were able to identify specific gang members and conduct outreach.¹⁹⁴ And Cincinnati law enforcement was able to bring criminal charges against over 30 members of the Tot Lot gang.¹⁹⁵

Around this time, CIRV began conducting voluntary “community conversations” with “chronic violent offenders” and “neighborhood youth influenced by older offenders.”¹⁹⁶ This is important to note, as CIRV did not merely conduct SNA and investigate firearms and gang-related violence, CIRV also took a second step—community outreach and individual intervention—to give a voice to stakeholders in the community while providing “would-be offenders” an opportunity to move away from a violent lifestyle.¹⁹⁷ CIRV’s community conversations are informal and strongly emphasize community involvement, creating a dialogue between the community and law enforcement, and sharing information. In addition to “chronic violent offenders,” and younger people, friends and families of the individuals invited to the meeting are welcome to join too.¹⁹⁸ Through this facilitation of an ongoing dialogue, CIRV is better able to create and maintain a relationship with the community while still helping to reduce firearms-related violence.¹⁹⁹ In addition to community conversations, CIRV conducts collaborative home visits to “deliver the anti-violence message to specifically identified high-risk violent group and gang members. CIRV’s home visit program was modeled after Boston’s “Operation Night Light,” which helped reduce homicide rates in Boston in the mid-1990s.²⁰⁰

CIRV employs a “Services Team,” which is “designed to provide meaningful alternatives to violence when gang members and high-risk individuals in the community are making decisions.”²⁰¹ Through an interagency approach, CIRV’s Services Team’s goal is to engage members of gangs in attempts to move these individuals away from violence and towards a “violence-free, pro-social, and eventually, employment-based lifestyle.”²⁰² CIRV uses social workers, an employment agency, and street advocates (“life coaches”) to provide individual attention to “would-be offenders.”²⁰³

CIRV’s approach is notable for several reasons. According to the University of Cincinnati’s Policing Institute, CIRV’s Services Team:

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“[R]epresents an important step for criminal justice system responses to violence that are part of larger social reforms. Specific strategies proposed for providing alternatives to violence include: 1.) providing social services to violent offenders and at-risk youth that address their criminogenic needs; 2) direct outreach, including coaching/mentoring of the target population; and 3) violence interruption activities in target neighborhoods.”²⁰⁴

CIRV’s multifaceted interagency approach allows for the promotion of specific and general deterrence by law enforcement while also allowing participants the ability to move away from violence and towards “employment-based lifestyles.”²⁰⁵ This has the effect of helping members of Cincinnati’s communities of color to avoid involvement in firearms-related violence and the criminal justice system.

Case Study: A Model for Engaging the Community – Richmond, California

In 2010, Richmond had a population of 103,701 with a population density of 1976 people per square mile.²⁰⁶ The racial makeup of Richmond was 31% white, 27% black, and 13.5% Asian.²⁰⁷ The median family household income was \$44,210.²⁰⁸ About 13.4% of families live below the federal poverty line. 39.5% of the population was Hispanic or Latino (of any race).²⁰⁹ 37.4% of the population had children under the age of 18 in the household.²¹⁰ In 2010, 7.7% of the population was unemployed.²¹¹

Long known for its high homicide rate, Richmond founded the Office of Neighborhood Safety (ONS) in 2007 in an effort to reduce firearms-related violence and homicides.²¹² ONS implements a combination of mentoring and data mining to reduce violent crimes while giving the program’s “fellows” access to a modest but steady stipend, resources, and education and/or vocational training.²¹³ Despite being funded by the city (and through several private donors), ONS *does not* share information with law enforcement.²¹⁴ ONS is partially based on Boston’s Operation Ceasefire, Chicago’s Operation Ceasefire and violence interrupters programs.²¹⁵

ONS’s coordinators (called “neighborhood change agents”), most of whom have previously been convicted of a felony, looks through police records and ONS’s own data to determine the 50 highest risk people in Richmond—the 50 people most likely be involved in firearms-related violence.²¹⁶ ONS then approaches these individuals and offers them a fellowship in the program.²¹⁷ ONS’s change agents “patrol the streets like beat cops” to “keep

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tabs on” their fellows.²¹⁸ According to ONS Director, DeVone Boggan, “We have better information than the police.”²¹⁹ This is due to the level of trust established between ONS and the community.²²⁰ As noted in a 2014 *Mother Jones* article by Tim Murphy:

“In exchange for shunning dangerous behavior, ONS fellows receive anywhere from \$300 to \$1,000 per month, depending on their progress following a “life map” of personal and professional goals. . . . ONS staffers help fellows take concrete steps toward stability, from providing assistance in getting a driver’s license or a GED to helping raise \$5,000 for a merchant-marine training class.”²²¹

While additional scholarly analysis of ONS would be helpful, ONS tracks the number of fellows who: are alive; have no new firearms charges since becoming a fellow; have no arrests related to firearms violence since becoming a fellow; and who have incurred no firearms-related injuries or hospitalizations since becoming a fellow.²²² ONS also tracks the progress of fellows in achieving the goals that they outline on their “life maps.”²²³ Since 2010, the number of firearms assault and homicides in Richmond has gone down every year.²²⁴ In 2013, Richmond saw its lowest number of homicides per capita in 33 years.²²⁵

Despite the lack of formal analysis, it does appear that through the creation of ONS as an independent community initiative, the City of Richmond and its police department were able to reduce the number of firearms-related homicides and the number of persons (predominately young black males) who enter the criminal justice system, while gaining trust and legitimacy within the community.

B. Recommendation: Police should engage the community in non-law enforcement activities, thereby fostering familiarity and camaraderie between police officers and the communities that they serve.

An effective community policing strategy recognizes the importance of engaging police officers in non-law enforcement activities. Relationships of trust between police officers and the communities that they serve are undermined when community members see police merely as an external occupying and oppressive force in their neighborhoods.²²⁶ In such an antagonistic context, the potential for racially biased policing increases.

Where police engage the community in non-law enforcement activities, the possibility

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of building familiarity and trust between police officers and neighborhood residents increases. Under this approach, police are not merely individuals who impose the law upon and enforce the law against community members. Rather, they become participants in the life of the community. The active cultivation of positive non-law enforcement interactions between police officers and community residents may reduce racial disparities in the criminal justice system by dispelling police officers' latent and manifest fears of the communities and the people that they police.²²⁷

Case Study: Police Create Community Center – Providence, Rhode Island

According to the 2010 U.S. Census, Providence's population was 178,042.²²⁸ The population was 49.8% white, 16% black, and 38.1% Hispanic or Latino (of any race).²²⁹ Providence's population density was 9,401.7 people per square mile.²³⁰ The median household income was \$26,867 with 23.9% of families living below the federal poverty line.²³¹

The Mt. Hope Learning Center was founded in 1998 by community members and the Providence Community Police Officers, "in response to the neighborhood residents' challenge to do something about preventing crime, rather than just locking people up after the fact."²³² Mt. Hope Learning Center's mission is to "provide a safe and free environment in which the children and adults of the community can learn skills that will enable them to have productive futures."²³³ Through the assistance of 450 volunteers and charitable donations, Mt. Hope now operates out of large 15 room house, which includes a professional kitchen, computer lab, library, music room, dining room, and officers for Community Police Officers and Assistant Attorney Generals.²³⁴ At Mt. Hope, adults and children can engage in numerous activities, including English as a Second Language courses, computer literacy courses, GED preparation course, nutrition workshops, piano lessons, and tutoring for children.²³⁵

Mt. Hope takes a community policing approach, which refers to "a variety of strategies that attempt to get the police away from rapid response to service and closer to the community on a day to day basis."²³⁶

Case Study: Restoring Community Relations Through Sports – Chicago, Illinois

According to Ronald Weitzer, a sociologist from George Washington University, one

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reason for the strained relationship between communities of color and law enforcement is the “huge” perception that police departments are “out of sync with the racial composition of the local population.”²³⁷ According to a 2007 survey, hundreds of police departments around the country feature a percentage of white officers that is more than 30 percentage points higher than their proportion of population in the community that the department serves.²³⁸ Nationally, in 2013, only 27% of local police officers were members of a racial or ethnic minority.²³⁹ According to the 2010 U.S. Census, racial minorities made up about 55% of Chicago’s population.²⁴⁰ Yet in 2010, Chicago’s police department was 53% white.²⁴¹ In March 2015, the ACLU of Chicago reported that African Americans, who make up just 32% of Chicago’s population were subjected to 72% of all stop-and-frisks.²⁴² In 2014, over 250,000 stops were made that did not lead to an arrest.²⁴³ The U.S. Department of Justice has noted that being subjected to stops and arrests in violation of the Fourth Amendment shapes black residents and can lead to a break down of trust between communities of color and law enforcement.²⁴⁴

In an effort to build trust in communities of color in Chicago, police officers have increasingly used sports to build rapport.²⁴⁵ In late August 2015, an all-star soft ball game was held in Humboldt Park on Chicago’s North Side.²⁴⁶ Chicago police officers made up one team.²⁴⁷ Their opponents were members of Broader Urban Involvement & Leadership Development (BUILD).²⁴⁸ BUILD is a gang intervention program whose mission is to “engage at-risk youth in the schools and on the streets, so they can realize their educational and career potential and contribute to the stability, safety and well being of our communities.”²⁴⁹ When asked about the effect of playing softball with police officers, Willie Correa, a Humboldt Park resident stated, “I think it shows they do the same things we do. They are human. We are able to play softball together, hang out, talk.”²⁵⁰ When asked about the significance of the annual softball game, BUILD’s director of intervention services, Martin Anguiano, stated, “[o]n the outside they were enemies and shooting at each other, but here they are friends and giving each other high fives, just playing.”²⁵¹ There has never been a violent incident in the history of this annual softball game.²⁵² A similar annual softball game was held in Chicago’s 15th District, on the West Side, between police officers and former gang members and youth from the community.²⁵³

In April 2015, several photos surfaced online of Chicago Police Department officers, in uniform, playing touch football with children on the West Side of Chicago.²⁵⁴ One photo shows three officers playing a game of catch with four African American children in a vacant lot on Chicago’s West Side.²⁵⁵ When asked about the photos, a Chicago Police Department

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spokesperson, Marty Maloney, said, “Is this part of a police strategy? Absolutely. This speaks to the community policing efforts [Supt. Garry McCarthy] implemented.”²⁵⁶ As of late September 2015, this photo of three officers playing football with four kids has received over 31,100 “Likes” on Facebook.²⁵⁷

Through actively engaging in community policing and interacting with communities of color (particular youth), law enforcement officers can gain a greater understanding of communities of color while building trust and establishing themselves as positive members of the community.

C. Recommendation: Police should implement alternatives to arrest for low-level disorder incidents.

In addition to cultivating non-law enforcement interactions with the community, police departments should also implement alternatives to arrest for low-level disorder incidents. One of the many causes of racial disparities in the criminal justice system is the degree to which African Americans are overrepresented within the arrest population.²⁵⁸ The Sentencing Project has found that it is important for police departments to “research the opportunities available for citizens who are at risk of arrest but for whom arrest is not appropriate.”²⁵⁹ This can “help to ensure that arrest alternatives are available in all neighborhoods, especially minority neighborhoods.”²⁶⁰ In addition, jurisdictions can expand the use of current alternatives to arrest “in instances where arrest is inappropriate but often used, such as status offenses for juveniles, or encounters with mentally ill or homeless persons.”²⁶¹

The development of alternatives to arrest for low-level disorder incidents—such as jaywalking or loitering—can curtail the flow of racial minorities who are channeled into the criminal justice system.

D. Recommendation: Community policing should include data-driven strategies to identify neighborhoods with the highest levels of violent gang activity and partner with community organizations to undertake strategic interventions.

A survey conducted among Wilmington residents in 2015 revealed that youth gang violence is a major community concern. According to the results of this survey, gang

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violence is one of the greatest challenges facing both the community and the police in Wilmington.²⁶² Some members of the community reported that “[t]he fallout from the gangs and the murders and shooting between gang members” present the greatest threat to public safety, notwithstanding the fact that drugs and homicides also contribute to violence in the city.²⁶³ This inquiry revealed that “the majority of the shooting incidents involved youth between thirteen and seventeen years of age.”²⁶⁴

Addressing youth gang violence is imperative not only because it threatens public safety but because it is yet another symptom of the set of overwhelming challenges children from marginalized communities must face on a daily basis: “poverty, high rates of abuse and neglect, and marginalization from the educational system and work force.”²⁶⁵ As discussed above, centuries of discriminatory policies have meant that communities of color have for decades disproportionately borne the cost of growing up in neighborhoods where such circumstances are the norm. Unfortunately, the structural forces that gave rise to communities prone to higher rates of violence are the same features of community life that, alongside the violence itself, helps to perpetuate the mythology of racial difference that drives racial bias in the criminal justice system. Thus, carefully and strategically responding to youth gang violence rather than resorting to arrest and incarceration at every turn is itself an opportunity to curb disproportionate representation of minorities in the criminal justice system.

E. Recommendation: Police departments should work with community groups to identify and address the root causes of youth gang violence, and to develop non-punitive solutions.

In a number of jurisdictions across the country, police have deliberately avoided using traditional punitive law enforcement tactics to address youth gun violence in the city. Rather, those departments have instead focused resources and attention on identifying and redressing—alongside community members—the “social and physical conditions” in the communities experiencing high levels of youth gun violence “that facilitate crime.”²⁶⁶

Case Study: Consensual and Non-Punitive Illegal Firearms Searches – St. Louis, Missouri

Starting in the 1990s, the St. Louis police department developed and implemented the Firearm Suppression Program (hereafter “FSP”) in an effort to reduce youth gun violence in

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the city.²⁶⁷ FSP was a “knock-and-talk” program that “elicited parental consent to enter homes to search for and seize guns from juveniles.”²⁶⁸ As part of this program, police officers would respond to a call—either from a parent or neighbor—concerning a juvenile’s illegal possession of a firearm. Police would then “visit the home and ask an adult resident for permission to conduct a search for illegal weapons.”²⁶⁹ The officers “would explain that the search was intended solely to confiscate illegal firearms, particularly those belonging to juveniles, and that there would be no criminal prosecution.”²⁷⁰ Police officers would ask the parent or adult resident to sign a “Consent to Search and Seize” form, which allowed them to enter the home legally to conduct a search.²⁷¹ Adult residents were also told that “they would not be charged with illegal firearm possession if they signed the consent form.”²⁷²

In these ways, the St. Louis police department attempted to meet the problem of youth gun violence through non-punitive approaches that emphasized dialogue and fostered trust between community residents and police. This approach, while potentially promising, is an avenue for further experimentation and study.

VII. CONCLUSION

Crucial to developing effective policing strategies for reducing the incidence of racial bias in the criminal justice system is an improved understanding of and appreciation for the challenges that marginalized communities face as a result of discriminatory societal and institutional barriers created over many years. Additionally, police must come to understand themselves as part of an institution that has, throughout history, used its power to help legitimize and perpetuate a mythology of racial difference that continues to drive much of the racial bias evident in the criminal justice system today. Thus, it is encouraging that more than 130 chief law enforcement officials from across the country, including Wilmington’s police chief, have joined together in an effort to confront some of the consequences of this problem and advocate for reductions in the country’s incarceration rate.²⁷³ Such efforts represent real progress. Developing cutting edge police tactics and acquiring state-of-the-art gear such as a body cameras will be insufficient to meet the challenge of confronting a system rife with racial disparities. Only by acknowledging this history and beginning the difficult work of truly engaging and collaborating with communities as full partners in a joint enterprise to improve the community overall will the strategies outlined in this paper become effective. Effective policing is about developing relationships, and where those relationships are damaged or non-existent, they must be nurtured and developed openly and honestly before progress will be possible.

ENDNOTES

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