

Recommendations to the President's Task Force to Strengthen Public Trust, Improve Police Accountability and Improve Public Safety

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I sue cops. For 38 years my docket has been crowded with excessive force, false arrest, racial profiling and cases challenging other abuses. We accomplished significant police reform in Cincinnati under a court order, *In re Cincinnati Policing*, 209 F.R.D.395 (S.D. OH. 2002).

Twelve years later we have embraced our reforms in policies, training, performance metrics and public education.

A. Actions by State and Local Agencies That Will Build Transparency and Trust

- **Reserve arrest and prosecution for serious threats to safety.** "Broken windows" is a bad strategy that makes criminals of people involved in minor transgressions. Let's save arrest and prosecution for the truly serious offenders. At the same time, let's do problem solving which engages multiple stakeholders around discrete problems – such as specific locations that become magnets for disorder. For each of those locations we gather the neighbors, tenants, property owners, public health agencies, traffic authorities, etc. with the police. Creative solutions emerge to stop crime at its core. We are doing this in Cincinnati, and it works.
- **Reject enforcement strategies that disproportionately impact people of color.** Stop-and-frisk campaigns harass law-abiding black and brown citizens without contributing to public safety. The hit rate on guns and contraband is extremely low and the strategy turns the public against the police. The federal court in New York was right to order major reform of stop and frisk, and other communities should follow that lead.

- **Ensure adequate policies and training.** I see many cities with bad policies and training. Often, training in use of tasers, response to mentally ill people, and “shoot/don’t shoot” is deeply deficient. This is a huge disservice to the officers and the public. This is particularly true in small towns. We need clear mandates for licensed law enforcement officers on what academies must teach and what must be included in recertification. Paper tests must be supplemented with validated scenario based training to truly prepare officers for the field and to keep them updated.
- **Hold officers accountable under criminal law *and administratively*.** Many have written about the need for a thorough, independent criminal investigation whenever an officer kills a member of the public. But what about discipline? This is the easiest to do but in my experience the most universally ignored. Even if the officer is not indicted, if he or she violated department policy and training, the officer should still be disciplined. Cruiser and body-worn videocams enhance supervision and allow helpful random audits of officer conduct. In any other well-run business, work rules are strictly enforced. Police officers should not get a pass.

B. Actions by the President and Congress

- **Hold officers accountable in civil cases.** Officers who violate civil rights must be liable to their victims in damages just like other wrongdoers. Accountability for excessive force is undermined by defenses like “qualified immunity” that protect police officers from judgments when they violate the law. It was created by judges but can and should be repealed by Congress.
- **Hold local government accountable under ordinary agency law.** If a pedestrian is run over by a delivery van, the delivery company is liable for the driver’s misconduct under

ordinary agency principles. If an unarmed citizen is the victim of excessive force, the city that employs the police officer is *not* liable unless city policies directly caused the officer's misconduct or the city was "deliberately indifferent" to a pattern of repeated failures in training and supervision. This standard discourages cities from implementing adequate training and supervision. Federal legislation should impose agency liability on local government.

- **Capture all the facts about excessive force.** The Death in Custody Reporting Act, signed last month requires that law enforcement programs report the death of any person who is detained, arrested, en route to incarceration, or incarcerated in state or local facilities or a boot camp prison. This is long overdue. Reporting should be extended to officer-involved shootings and tasings that cause serious injury and not just death.
- **Allow lawsuits based on disparate racial impact.** Under Title VII, employers are liable if they impose unfair job requirements that have an adverse impact on a particular race. We need to use the same theory to correct racial injustice within the law enforcement system. Many law enforcement strategies result in criminal justice sanctions imposed disproportionately on people of color. These discrepancies also appear in school discipline. Legislation should fix this serious problem.

C. **Dialogue and Collaboration at all levels.**

I work in Cincinnati but rarely sue the city or its officers anymore. Why? Because many of the ideas in this testimony have taken root in Cincinnati, Ohio where we have engaged in an ongoing police–community dialogue for more than 12 years. That's right: community members, police union representatives and police administration regularly talk together as we seek continued reform based on our 2002 Collaborative Agreement. Trust comes slowly, but it does come when

citizens walk in the shoes of an officer facing terrifying moments and when officers walk in the shoes of people of color who feel over-policed.

What did we do in Cincinnati that may serve as a model for other communities?

First, we listened. We surveyed everyone and thousands contributed ideas for reform. We hosted small group discussions. We held community forums. We started with eight stakeholder groups and identified five consensus goals to which everyone – police officers, community residents, business representatives, clergy, youth, etc. – agreed:

First Goal: Police Officers and Community Members Will Become Proactive Partners in Community Problem Solving

Second Goal: Build Relationships of Respect, Cooperation and Trust Within and Between Police and Communities

Third Goal: Improve Education, Oversight, Monitoring, Hiring Practices and Accountability of CPD

Fourth Goal: Ensure Fair, Equitable, and Courteous Treatment for All

Fifth Goal: Create Methods to Establish the Public's Understanding of Police Policies and Procedures and Recognition of Exceptional Service in an Effort to Foster Support for the Police

Second, we committed to a court enforced collaborative agreement that detailed the path toward implementing these five goals. At the table we had the City administration, the police union, the community and the DOJ. We agreed to implement problem solving; install cameras in all cruisers; monitor the videos of police – community interactions; reform use of force policies and investigations; upgrade mental health interactions; establish an early warning system; eliminate bias in policing; establish a citizen complaint authority with independent investigators and subpoena power; and survey the citizens regularly on our progress.

Third, we made sure that the court ordered reforms were translated into policies and procedures; that the policies were then fully translated into the training materials and modules; and that the training was reinforced with the performance and promotion standards.

Fourth, when court supervision ended we established a working group from the same diverse stakeholders who continue to meet regularly with the City manager and police administration to ensure that the reforms continue and that changes that are needed get implemented.

Fifth, we have maintained a diverse law enforcement workforce with approximately 1/3 African American and nearly 1/4 female.

Cincinnati is not perfect. But we have an inclusive structure through which we can confront and resolve problems that arise. Citizens, police union representatives, police administration, and other stakeholders are still at the table twelve years later. Still engaged. Citizens do not feel “occupied” by the police. Crime abatement strategies are much more creative and effective than simply making arrests. Come and speak with us. I encourage anyone to speak with those who have worked for years on reform in Cincinnati including but not limited to Reverend Damon Lynch III, Iris Roley, Margaret Fox, Don Hardin, and FOP President Kathy Harrell.