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School of Law

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President's Task Force on 21st Century Policing
US Department of Justice
Office of Community Oriented Policing Services
145 N Street NE
Washington, DC 20530
via email PolicingTaskForce@usdoj.gov

Dear Co-Chairs Ramsey and Robinson, and members of the Task Force:

Thank you for the opportunity to testify at the fourth public listening session on the topics of Community Policing and Crime Reduction. I am a law professor at Saint Louis University School of Law. I teach Human Rights Law, Racism and the Law, and beginning this fall I will be teaching Constitutional Law as well. I am also a member of the Ferguson Legal Defense Committee, and I have been involved in the demonstrations as a protester, organizer, legal observer, and policy advocate.

After testifying alongside Mike Brown's parents and Ferguson activists on the world stage before the United Nations in Geneva, the responses from UN officials made it apparent that the state of policing and the criminal justice system in the United States has damaged America's moral standing, not just amongst Black and Brown communities in the United States, but in the eyes of many nations around the world. During the hearing, multiple Committee members questioned the United States government delegation with shock about its failure to put into place effective accountability mechanisms or ensure equal application of the law. After the hearing, the UN Committee Against Torture officially expressed its concern about the "numerous reports of police brutality and excessive use of force by law enforcement officials, in particular against persons belonging to certain ethnic groups."ⁱ It also expressed its "deep concern" about "the frequent and recurrent shootings or fatal pursuits by the police of unarmed black individuals" and it noted the "alleged difficulties of holding police officers and their employers accountable for abuses."ⁱⁱ The U.S. is expected to answer these concerns in the coming months pursuant to the treaty compliance review process.

The UN is right to be appalled. This misconduct takes place in the context of a combined state and federal prison and jail population that is nearly 43 % Black, in a nation that is only 13% Black overall.ⁱⁱⁱ The United States currently has 5% of the world's populace, but 25% of the world's inmates.^{iv} The incarceration rate of 750 inmates per every 100,000 citizens is nearly 8 times the rate of Russia, China, Iran, or Germany.^v Even worse, this high rate of imprisonment is blatantly racialized. The United States imprisons more of its Black community than South Africa did at the height of Apartheid.^{vi} In light of the additional revelation by the Malcolm X Grassroots Movement that a Black person is summarily executed by police every 28 hours, it is

clear that our racial justice system has manufactured a racial ticking time bomb.^{vii} This bomb is now on the verge of explosion in light of the killings of Trayvon Martin, Mike Brown, Eric Garner, Tamir Rice and others. In light of the justice demanding demonstrations in over 200 cities across the country in 2014, we can predict that we likely have not yet seen the worst of the social unrest that will be caused by our failing criminal justice system.

I hope that this testimony and that submitted by others will provide you with enough information to recommend meaningful changes to the President of the United States, changes significant enough to prevent a racial explosion. In fact, I remain hopeful that the United States can become a beacon for human rights and democracy around the world. For this to happen, our policing and criminal justice community must become a force for justice, not injustice, and healing, not racial division, in our lifetimes.

In this short testimony, I plan to address the role of community policing in creating public trust in law enforcement.

The Long Road to Community Policing

Although no universal definition of community policing exists, the Office of Community Oriented Policing Services (COPS) within the United States Department of Justice describes community policing as “a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.”^{viii} Some have looked to community policing as a panacea, arguing that if police departments around the country decide to install community policing today, they could immediately create public trust in law enforcement. This view of community policing as a panacea is false.

Police departments throughout the country have proven themselves to be secretive, militarized, and implicitly (and sometimes explicitly) racialized organizations that harbor an “us vs. them” mentality in their relationship to Black and Brown communities. Based purely on the data, it would be completely unreasonable, and even irresponsible, for these communities to engage in partnerships with policing organizations that see them as enemies in some sort of imaginary war. The language of “restoring trust” inaccurately suggests that the basis for our survival instinct rests on unschooled emotion, or emerges from a relationship dynamic that should alter with a well-mannered gesture. To the contrary, for decades now police in the United States have proven, statically, that a Black man faces the prospect of unprovoked assault when engaged in any minor interaction with a police officer. Whether the Black man is a tenured Harvard professor on his way home like Skip Gates, or a teenager on cusp of college on his way home like Mike Brown, it matters not.

In the context of this legacy, the shooting to death of Mike Brown, who was stopped for jay-walking, and the choking to death of Eric Garner, who was stopped for selling loose cigarettes, were fresh cuts in an old wound. The task force should acknowledge that community policing, and the trust it necessarily demands, can only become a reality on the heels of a fundamental shift in the role of policing in our society. I would analogize it to a four step process:

Step 1: Crawl: End the hostile, racialized, militarized war on black and brown communities

In many instances, bald and ugly racial aggression animates policing policy towards minority communities. Black police officers themselves have admitted that racial aggression permeates their work environment and they experience racial profiling when they themselves are not on duty.^{ix} In Saint Louis, racial profiling statistics have consistently demonstrated a pattern of discriminatory policing, where not only are some citizens targeted for police stops based on race, but police are given ticket quotas that serve to fund major segments of municipal budget.^x

Police departments often explicitly reject community policing practices in order to engage in “hot spot” policing. They use military language and talk of waging a “war” on drugs. They use SWAT teams to execute search warrants in low-level drug investigations.^{xi} Many departments continue to recruit former military veterans without retraining them to properly engage with community members in a non-military setting. Some have PTSD and think they are on the streets of Iraq when they are on the streets where our loved ones live. Some see every person of color in these neighborhoods not as citizens but as targets or enemy soldiers where they have to kill them first or be killed. We saw this demonstrated recently in Miami, Florida, where police unapologetically used the faces of Black men from the community as target practice in their training modules.^{xii} We must conclude that the community oriented policing services division of the department of justice has not effectively imbued its vision of community policing into police departments around the country.

This warlike mentality is then reinforced by programs like the Federal government’s 1033 program, which redirects excess military equipment like assault rifles and mine resistant tanks to local law enforcement agencies upon request with little oversight. The militarized mindset this equipment nurtures has an impact on day to day policing. Where no reasonable adult would believe that a fleeing figure who has been shot is coming their way, or a nearly strangled person is about to unleash force, a soldier on the battlefield must always veer on the side of killing because they constantly are engaged with enemy soldiers who are trying to kill them. In the context of stereotypes of black criminality, military policing facilitates perceptions of the black body as a perpetual threat and a constant candidate for indiscriminate killing.

Recommendations:

-Condition DOJ Funding and Police Department Operation Capacity on the end of Racial Profiling: Serious proposals to end harmful practices by government agencies attach funding penalties, a licensing procedure that includes the loss of licenses for individuals and departments, or the merger of departments as consequences for the lack of compliance. No one has yet proposed this type of firm commitment to ending racial profiling in the United States. No more empty platitudes. Only firm financial and operational penalties will end this immoral behavior.

-End the 1033 Program: Giving police high level military equipment without training promotes irresponsible usage. The alternative of training police to use the deluge of military equipment they receive serves to further inculcate the militarized culture of an occupying army at war with citizenry they plan to attack. The mass transfer of this military equipment to state and local police should simply end. If police have the equipment, they will use it, no matter how much you train them.

Step 2: Walk: Adopt basic norms of transparency and violence prevention

In light of the behavior noted above, too often police departments cultivate a culture of secrecy. This misguided approach prizes loyalty above all other norms of morality. Police unions in particular have played a corrosive role in tarnishing relationships with community members. In New York a police union official openly declared war on citizens.^{xiii} In Saint Louis, a police union official as recently as late January appeared at a community meeting wearing an “I am Darren Wilson” wristband.^{xiv} In both instances, union officials identified any oversight or questioning of police practice as a direct attack on them, and they threatened to retaliate.

To the contrary, the creation of trust requires transparency and accountability, specifically in regards to the racialized police violence. It would be irrational for communities to trust that law enforcement has ended decades old practices of aggression without the provision of data to provide proof, or new use of force practices to provide assurance.

Recommendations:

-Create a National Federally Operated Database of Police Violence and Racial Profiling:

Currently, data on arrest rates, police-civilian interactions, racial discrimination, police complaints, and police involved shootings is unreliably collected in piecemeal fashion. The federal government should complete a comprehensive review of data collection practices by local law enforcement and develop a new federally operated data collection system that mandates annual reporting of this data.

-Create National Standards in Compliance with UN Human Rights Norms for the Use of Force: The Eighth United Nations Congress adopted its “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials” in 1990.^{xv} It states that law enforcement should not use firearms against people unless less extreme means are insufficient, and should not seek to kill people unless strictly unavoidable to prevent loss of life. It also states that force should not be used to disperse unlawful assemblies, or the least amount of force possible should be used. Police can rebuild trust by adopting norms like these which demonstrate that, even in Black and Brown communities, lives are valued and mechanisms are in place to protect the sanctity of life. Some other potential use of force standards could include:

-Disallow the use of deadly force for minor violations^{xvi}

-Provide the right to a hearing with any officer who uses force against a citizen

-Mandate threat progression, de-escalation, and conflict resolution training^{xvii}

-Mandate personal liability insurance for police officers^{xviii}

Step 3: Run: Embrace Human Rights Policing as an Ideal

Policing will not transform until we hold ourselves to the highest standard of respect for the basic human dignity of all people. To that end, we must:

Articulate a Commitment to Human Rights, not just Crime Reduction. Currently, law enforcement measures of success prioritize crime reduction above all other values. In this context, law enforcement officials can declare broken windows policing a success when overall crime rates decline, even if less graffiti it comes at the cost of the ripping apart the ethical fabric of the society. Less marijuana use is measured as a success even if it comes at the cost of a

broken generation, or a generation of black children with incarcerated parents. Also according to this logic, the killings of Mike Brown and Eric Garner were successful policing experiences, because it resulted in one less jay-walking incident or loose cigarette sale, notwithstanding the social strife these blunders caused. Instead, a human rights ideal would consider the impact of policies in people's lives, and use overall societal wellbeing as a measurement of success.

Create a DOJ operated fund to provide financial recompense and resources for rehabilitation for victims of police brutality. Truth and reconciliation processes have been helpful in the human rights context when they provide for substantive recompense for individuals who have been wronged by state actors. A fund that provides support not only for families of victims killed by police, but for those who cannot afford civil litigation for non-deadly assaults should be established.

Step 4: Fly: Engage in Community Policing

Police often make the mistake of assuming that community policing calls for the expansion of the role of law enforcement in community life. Although interaction with community organizations and neighborhoods instill the community service ideals that ultimately provide the community policing model with promise, this occurs in the context of a culture where some communities are over policed, and others are not, often superficially based on "hot spot" rationales that serve as a proxy for racial targeting.

Without first explicitly embracing Human Rights as an ideal, many police cannot fathom what community policing would look like in practice, or they can embrace solutions that make the problem worse. However, valuing human rights, and not crime reduction alone, would entail:

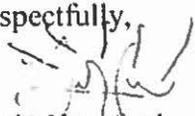
The Repurposing of Federal Law Enforcement Funds to Support Community Based Alternatives to Incarceration. A true embrace of human rights norms would include support for restorative justice, know your rights, entrepreneurial and vocational skills training, robust civilian review boards, and amnesty programs to help community members flourish.

Conclusion

Upon our return from Geneva, we felt both legitimized by the international community, and saddened that we had to travel halfway across the world to have our dignity legitimized. I end with this because any system which denies one's human rights denies one's humanity. Current police practices treat people in ways that fly in the face of all major faith traditions and basic notions of human dignity. And people around the world are not blind to this reality.

The culture of policing and mass incarceration in the United States has compromised the moral standing on the United States on the global stage. Ultimately policing is simply the tip of the spear—mass incarceration must be ended. The policing based recommendations contained in this short testimony, while not sufficient to ameliorate generations of targeted police violence and intimidation of communities of color may begin a process of healing.

Respectfully,


Justin Hansford

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- ⁱ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/247/23/PDF/G1424723.pdf?OpenElement>
- ⁱⁱ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/247/23/PDF/G1424723.pdf?OpenElement>
- ⁱⁱⁱ See http://www.bop.gov/about/statistics/statistics_inmate_race.jsp, <http://www.naacp.org/pages/criminal-justice-fact-sheet>
- ^{iv} <http://www.naacp.org/pages/criminal-justice-fact-sheet>
- ^v Michelle Alexander, *The New Jim Crow* 6 (2010).
- ^{vi} *Id.*
- ^{vii} <https://mxgm.org/wp-content/uploads/2013/05/we-charge-genocide-FINAL.pdf>
- ^{viii} <http://www.cops.usdoj.gov/Publications/e030917193-CP-Defined.pdf>
- ^{ix} <http://www.reuters.com/article/2014/12/23/us-usa-police-nypd-race-insight-idUSKBN0K11EV20141223>
- ^x <http://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty/>
- ^{xi} <https://www.aclu.org/war-comes-home-excessive-militarization-american-policing>
- ^{xii} <http://www.usatoday.com/story/news/2015/01/15/miami-police-target-practice-mug-shots-blacks/21834491/>
- ^{xiii} <http://www.theguardian.com/commentisfree/2014/dec/21/two-nypd-cops-killed-wartime-police-protesters>
- ^{xiv} <http://www.dailymail.co.uk/news/article-2931020/Mass-brawl-erupts-City-Hall-meeting-discuss-civilian-oversight-Ferguson-police.html>
- ^{xv} <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>
- ^{xvi} http://www.washingtonpost.com/opinions/ending-excessive-police-force-starts-with-new-rules-of-engagement/2014/12/25/7fa379c0-8a1e-11e4-a085-34e9b9f09a58_story.html
- ^{xvii} <http://obs.stl.org/news/item/quality-policing-initiative-2>
- ^{xviii} <https://cfppmpls.wordpress.com/the-details/>