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Comprehensive Police Reform: Essential *Yet Still* Elusive

Authored by Benjamin Crump and Antonio M. Romanucci | April 4, 2022

Overview: The murder of George Floyd in 2020 ignited a new era of civil rights momentum in America. For some, it raised deep-seated issues and concerns about justice and policing while for others it created a new or increased awareness of the need to create greater trust between police and communities of color. Many people with diverse interests aligned to call for comprehensive police reform at the local, state and federal levels. Advocates of reform underscored the urgent need, based on data that showed police violence is a leading cause of death of young Black men: On average, unarmed Blacks are 3.5 times more likely to be shot by police than are unarmed whites.

However, despite the passage of the George Floyd Justice in Policing Act by the U.S. House of Representatives in March of 2021, the bill failed to gain support in the Senate. The proposed federal legislation would have increased accountability for law enforcement misconduct, restricted the use of certain policing practices, enhanced transparency and data collection, and established best practices in training - all with the intent of increasing trust between police and the communities they are sworn to serve. Although this type of legislation remains elusive at the federal level, some progress has been made at the state and local levels in states like Colorado, California, Maryland, Iowa, New Mexico, New York, and Illinois. These states have passed multi-faceted laws that begin to address the immunity of officers involved in misconduct, ban or restrict some tactics like chokeholds, and mandate body-worn cameras. Minneapolis itself passed significant reform, including clarifying use of force reporting, requiring de-escalation with a focus on the sanctity of life (2021), and further restricting the use of no-knock warrants following the death of Amir Locke (2022).

In fact, a survey released in March of 2022 shows that at least three quarters of Americans, both Black and white, say more progress is needed on police reform, with 70 percent of Black Americans saying "a lot" more needs to be done. The study, by the Associated Press and the independent National Opinion Research Center at the University of Chicago, found that among those who felt progress is needed for the fair treatment of Black Americans by police, more than two-thirds were either pessimistic or neutral that such change was possible in the next few years. A continued political stalemate and stagnation in Washington, D.C. and competing cries for increased policing to combat rising crime are headwinds for police reform.

Importantly, in April of 2022, the Minnesota Department of Human Rights (MDHR) released its findings from a comprehensive study of policies and practices of the Minneapolis Police Department for ten-year time period beginning in 2010. The group analyzed hundreds of hours of body-worn camera footage, interviewed members of law enforcement and community groups

and examined closely the use of force on Black citizens and others in identical stops or circumstances. The study concluded that, in fact, there were policies and practices that discriminated on the basis of race related to the use of force, use of racist or misogynistic language as well as social media engagement and surveillance. MDHR officials committed to seeking a consent decree to mandate change in the Minneapolis Police Department and hold law enforcement and city leaders accountable for that change. We applaud this historic report - the first of its kind in the country - yet also ask how many others of the 18,000 police departments in the United States have the same race-based discriminatory policies and practices that also cry out for reform?

The nation's cost of police misconduct goes beyond destruction of community trust and, in fact, can be quantified by the actual financial cost of verdicts and settlements to make whole those injured by misconduct. Released in March of 2022, a comprehensive and groundbreaking Washington Post investigation showed how tragically little data was available on these cases but also provided a broad view of the financial toll of misconduct on municipalities. Of the 25 police departments analyzed, the study approximated more than \$3 billion was paid over the last ten years for citizens wrongly injured or killed by police. Tragically, more than half of that, \$1.5 billion, involved officers who had repeated complaints or lawsuits for misconduct. One of the highest aims of police reform is to identify, document, retrain or remove those high-risk officers, thus reducing the financial liability to cities and increasing trust in the community.

Civil justice movements have arisen in the past yet failed to produce lasting and meaningful reform. Building trust between communities and police will require comprehensive change and a set of agreed-upon federal standards common to all law enforcement. We offer this paper as a blueprint for reforms that will yield greater transparency and accountability to improve the level of trust between citizens and the officers who are sworn to serve and protect them. Calls to defund the police have been misconstrued and twisted into an attack on Black Lives Matter, when, in fact, they were aimed to draw attention to the need to define a proper role for police and to fund appropriate training and reforms, leading to improved accountability.

1. Standardize and Professionalize Policing

Historically, police standards – including recruitment, selection, certification, training, procedures, and protocols – have been established at the local level, with wide variations from jurisdiction to jurisdiction. This sits in stark contrast to many other professions, even those where performance does not carry such life-and-death implications as law enforcement. Many professions, including law, medicine, aviation and even hairdressing, have required minimum education, training, and licensing standards and include oversight and regulation by a governing body empowered to revoke licenses for violations of performance standards, and to prohibit dismissed individuals from gaining employment in other places. Uniform standards are absent in law enforcement, where thousands of agencies at the federal, state, and local levels adhere to different standards promulgated by a multitude of organizations including The Commission on Accreditation for Law Enforcement (CALEA), Peace Officer Standards and Training (POST), Federal Law Enforcement Training Accreditation (FLETA), and the International Association of Chiefs of Police (IACP). Individual agencies have independent and non-uniform guidelines created by their respective unions. We believe a national standard that sets a minimum bar and consistent expectations is essential to creating uniform, professional policing in every jurisdiction and at every level, while also allowing for local agencies to still adapt the way they conduct their departments to local needs based on the sizes and cultures of their communities. In addition to consistent and professional policing, a national standard can also reestablish citizens' trust that they are interacting with professionals trained to a high standard, and that those professionals can and will be held accountable to that standard. A national standard would also enable an agency to measure and discover areas in an officer's skillset that may need reinforcing, retraining, or even reprimand, ensuring that policing is kept to a respectable and efficient standard, well after recruitment.

The on-the-job experiences of law enforcement officers can inflict a heavy toll on the mental health and well-being of those officers, who are routinely called upon to deal at close range with the darkest human behavior. The "tough-it-out" traditions of law enforcement often force officers to internally bury the worst of what they encounter, and while some strides have been made in providing mental health resources, too few agencies offer robust assistance or a culture that helps these officers process the negativity in a constructive, healthy way. The culture or code of silence within police departments coupled with the stresses of the job lead to a mental health spiral for many officers. To enhance the overall professionalism of law enforcement as well as officer safety, agencies must address the mental health needs of their own officers. This should include assessment, training, insightful psychological exams, compassionate treatment, mandatory job rotation, and reassignment of duties, if necessary.

We therefore recommend adoption of:

- National licensing standards to ensure consistency and a baseline of performance and measurements, as well as a process to decertify officers who are no longer fit for duty.
- Model policies and procedures to create a roadmap for law enforcement leaders.
- Development of a national police hiring exam that identifies suitable candidates on psychological, emotional, physical, and intellectual levels.
- Standard and consistent training to prepare and maintain officers fit for duty, keeping perishable job skills sharp with regular, interactive training modules.
- Enhanced mental health services for officers to prepare them for their duties and support them throughout their career.

2. Enhance Accountability and Transparency

Law enforcement officers are public servants, and a sacred trust should exist between them and the communities they police. For this trust to be realized, officers must be accountable for their actions. The public needs, and should be entitled to, full visibility and transparency on the part of law enforcement. However, policing today is beset by wide variations in a range of areas, including incidents that involve citizen injuries or deaths in police custody; investigations into police actions; when and how police are disciplined; the use of body-worn cameras; the types and completeness of information made available for public scrutiny; and reporting of data on use-of-force and other practices. When investigations into police conduct are carried out by police agencies themselves – often limited by collective-bargaining requirements – their objectivity is questionable, at best.

The addition of uniform accountability measures, including national baselines for reporting, standardized protocols for independent investigations, an accessible database of disciplinary actions, and mandates for the use of accountability technology such as bodycams and dashcams, can do a great deal to elevate public trust through such transparency. Bodycams, for example, shed light on, and provide incontrovertible documentation of police conduct, both when it is reasonable and justified as well as when it is excessive. The use of this technology should be mandatory in all jurisdictions, and a national standard should be established for its appropriate use and implementation. Intentionally turning off a bodycam should be a federal obstruction of justice violation, and officers should face a rebuttable presumption of guilt and a requirement to explain why it was not on.

Reporting

Data on police killings is challenging to find, making it difficult to quantify the scope and nature of citizen deaths at the hands of police. Law enforcement agencies face few sanctions for failing to report such information and have little incentive to transparently report data on police activity, especially the use of deadly force. This lack of reporting allows excessive use of force to continue while, simultaneously, further undermining public trust. Government officials in general, and law enforcement agencies in particular, should be troubled that the news media has expended more resources investigating officer involved shooting deaths than have police departments or the federal government. This is a national embarrassment. The work being done by the Citizens Police Data Project in covering complaints against Chicago police officers presents an example of what a national data clearinghouse could look like.

The FBI operates a voluntary program through which law enforcement agencies may submit their annual count of “justifiable homicides” (which it narrowly defines as “the killing of a felon in the line of duty”). However, it can be argued that this non-mandatory system of reporting is, in fact, less valuable than having no system at all – as fluctuations in the number of agencies choosing to report, plus faulty reporting by those agencies that do so, have resulted in partially informed news coverage that points misleadingly to trends that may or may not in fact exist. Compounding this issue is the reality that those agencies with the worst problems with excessive use of force are the least likely to participate in this voluntary system.

Between 2005 and 2012, just 1,100 law enforcement agencies – a small fraction of America’s 18,000 police agencies – reported a “justifiable homicide” to the FBI. The FBI system included 461 justifiable homicides by law enforcement in 2013, the latest year for which data are available. Crowdsourced counts, however, identified almost 300 additional fatalities during that one year. The Counted, an investigation by

the publication *The Guardian* into the true number of people killed by law enforcement, reported when it launched on June 1, 2015, that it had already found close to that “annual” number of killings in just the first five months of 2015. *The Washington Post* runs a similar study tracking the number of fatal police shootings and has found that the FBI undercounts fatal police shootings by more than half. *The Washington Post*’s own research over the past five years has discovered that around 1,000 fatal police shootings occur every year.

Accountability and Qualified Immunity

The concept of qualified immunity provides legal protection for police officers, shielding them from civil lawsuits unless plaintiffs can show that the officer violated a clearly established statutory or constitutional right of which a reasonable person should have known. Simply put, it far too often serves as a get-out-of-jail-free card for offending officers who would otherwise be prosecuted if the same actions had been made by a citizen. Qualified Immunity has protected officers from facing consequences for actions where the use of force has not been justified and citizens have been injured or killed as a result of an officer’s excessive behavior. In many such cases, justice – both civil and criminal - has eluded those who deserve it most.

Police officers who behave outside the bounds of the law should face consequences for their actions. Therefore, we propose elimination of qualified immunity. Further, there should be a clear federal definition of what constitutes a “reasonable” police officer, to ensure that the same standard is applied everywhere and to avoid misinterpretation or varied interpretation at the local level.

We recommend adoption of:

- Creation of a National Police Accountability Oversight Task Force to set consistent standards and expectations.
- A mandatory permanent and public national database of officer misconduct, to provide transparency and consistency.
- Uniform reporting standards by agencies to generate reliable data and understand trends in policing.
- Uniform use of body-worn cameras and policies to provide documentation of citizen encounters with officers.
- Intentionally turning off a bodycam should be a federal obstruction of justice violation with a rebuttable presumption of guilt for officers who turn off a bodycam in a case involving a police shooting.
- A standard, independent investigatory process for impartial inquiries of officer misconduct allegations.
- Removal of qualified immunity protections to create full accountability and increase community trust.

3. Reframe the Role of Police with Aim to Preserve Life

Militarization of law enforcement

U.S. law enforcement has become increasingly militarized over the past 40 years, in large part due to its association with the war on drugs and efforts to combat terrorism, as well as the availability of surplus military gear from decades of overseas wars. U.S. military activity since 9/11 has also created a new generation of younger military veterans seeking civilian work in law enforcement. This has altered the relationship between officers and the communities they police and has led to an exponential increase in the use of lethal force.

As we reframe the role of civilian law enforcement in American society, we must make explicitly clear this premise: All human life has dignity and value, and police should take life only as a last resort when their own lives or the lives of other citizens are actively and imminently threatened.

Use of Lethal Force

Wide differences currently exist in determining whether an incident meets the threshold for the use of deadly force, and whether and how such force must be reported and investigated. Progress in this important area of policing will require, among other factors, a common understanding regarding the definition and use of deadly force.

Some agencies categorize the use of lethal force based on whether the officer fires a service weapon, regardless of whether a subject is actually killed or injured, while others apply the term even if an officer points a firearm at a subject without discharging it. Some report lethal force incidents to the FBI Uniform Crime Report (UCR), while others do not. Many use-of-force reports use boilerplate language incorporating such buzzwords as “I was in fear for my life,” rather than actually detailing the behavior that caused such fear within the officer. Supervisors in turn allow this vague language to proceed up the chain of command, enabling officers to evade any meaningful explanation of their actions. In some jurisdictions, post-event interviews allow officers to justify their actions by claiming that the incident was “rapid, tense, and uncertain,” words specifically designed to satisfy the objective reasonableness standard established in 1989’s *Graham v. Connor*.

Establishing a common understanding of what constitutes and justifies the use of lethal force, determining when it should be reported and to whom, and adopting a process for unbiased interviews all are critical steps on the path toward arriving at the truth. Determination should be made regarding the incremental use of force to maim versus shooting to kill, and if so under what circumstances force and firearms should be used and escalated.

Restraints

Although air chokes have been banned since the 1980s, the public continues to see – and be outraged by – deaths from positional restraint asphyxia, in which body position interferes with the subject’s ability to breathe. The flashpoint case of George Floyd generated national and then worldwide attention after he died in May 2020 due to restraint or compression asphyxia, which occurred even though he was handcuffed, on the ground and posed no threat to the attendant officers. As long ago as June 1995 – more than a quarter-century ago – the U.S. Department of Justice warned law enforcement agencies, “In a recent analysis of in-custody deaths, we discovered evidence that unexplained in-custody deaths are caused more often than is generally known by a little-known phenomenon called positional asphyxia.” The document, a bulletin from the National Law Enforcement Technology Center, detailed the basic physiology of a struggle, noting that suspects are often perceived to be resisting when in fact they are struggling to breathe.

Additionally, standardized training on use and risks associated with restraints, electronic control weapons, tasers, and impact weapons is needed to prevent unnecessary deaths in police custody. Because such training would likely mean changing the common practices of officers who have used such techniques for years or even decades, a robust, repeated, and hands-on training protocol would be required to bring about effective and meaningful change.

No-Knock Warrants

In recent months, intrusive and dangerously high-stakes tragedies related to the execution of no-knock warrants have risen to the public consciousness, as well. The deaths of Breonna Taylor and Amir Locke, both of whom died after being awakened by law enforcement seeking other people during service of no-knock warrants, show the clear and present danger of this policing tactic. The cities directly impacted by these two tragedies, Louisville, Kentucky, and Minneapolis, Minnesota, have since each moved to significantly limit the use of no-knock warrants by law enforcement, and a Congresswoman from Minnesota has begun to champion this issue in Congress. But more needs to be done. We advocate for bans or a severe reduction of no-knock warrants by all police departments across the country and for more transparent data collection and reporting so citizens can see and understand the scope of this issue.

Encountering Citizens with Mental Health Concerns

An estimated 25% to 50% of people who are shot and killed by law enforcement were experiencing a mental health crisis when officers were called. A key part of reframing the role of police is to provide the necessary professional supports for cases that involve a suspect with a mental illness. In many cases, these encounters require skill to analyze, de-escalate, and provide medical/mental health care. Police dispatchers and 911 operators must receive ongoing training so they are able to ascertain if an individual is mentally ill and/or experiencing a mental crisis, as well as whether the person is off or on psychotropic medication, is under the care/treatment of a mental health professional, is self-medicating with illegal controlled substances such as methamphetamine, or had prior 72-hour holds. The information derived from the initial call often contains the most critical intelligence to be provided to first responders, as it can – and often should – trigger a co-response from a mental health professional.

Far too often we see officers issue repeated staccato commands to personal suffering from a mental health crisis, who can have challenges processing and responding appropriately, which leads to a misunderstanding and escalation of force. Police and government agencies need to discuss ways in which they can provide a more fulsome and compassionate response – one that does not simply use force to subdue a person in the midst of a mental health crisis – to bring an appropriate and peaceful resolution whenever possible.

We recommend:

- The demilitarization of policing to emphasize the sanctity and preservation of human life, including banning chokeholds and prone restraints and placing significant limits on no-knock warrants.
- A common curriculum in de-escalation.
- Continuous training in de-escalation techniques to provide an ongoing learning environment and to ensure that officers' skills and responses are appropriate and up-to-date.
- Additional mental health supports to ensure that appropriate resources and a humane approach are used with those in crisis.

Conclusion: A tumultuous 2020 exposed longstanding fissures in our society in the relationship between police and the communities they serve, and the months that followed were filled with a once-in-a-generation cry for change in the way law enforcement engages with citizens. The hope was to increase accountability and transparency and to put a greater focus on the sanctity of human life, regardless of race. The truth is that since the death of George Floyd, there has been modest reform at the local level in some cities and states but meaningful reform of the militarized culture of policing in America still remains elusive. The cases and circumstances that increased the public's consciousness can and should still be used for the greater good and should serve as a rallying cry for meaningful and positive police reform.

We believe the pillars of standardizing and professionalizing policing, creating greater accountability and transparency, and reframing the role of police to preserve life are essential to our progress and health as a nation. Change of this magnitude will require time, expertise, the investment of dollars and some difficult emotional and cultural work to come together and move forward to rebuild trust. The need remains for federal and state lawmakers to recognize the policing problems and the resulting community trauma, and to listen to public insistence for change while also having law enforcement leaders at the table to be fully engaged in the transformation. We call for all of these stakeholders to resurrect conversations with community leaders and law enforcement and move forward with legislative reforms to heal and help move our country forward into a new era of policing.