

**AMERICAN BAR ASSOCIATION**  
**TASK FORCE ON BUILDING PUBLIC TRUST**  
**IN THE AMERICAN JUSTICE SYSTEM**

January 25, 2017

## I. INTRODUCTION

This report examines a wound in the American criminal justice system that members of the legal profession have a special duty to address. In too many parts of the country, relationships between people of color and law enforcement are broken. Communities have been traumatized by police killings of civilians, often unarmed black men, captured in chilling footage and transmitted across traditional media and the Internet. Anger, suspicion and resentment toward the police have followed, frequently in the same communities that are most in need of professional and responsive policing. And protests have erupted. Many have been peaceful demonstrations, but others have led to violence and civil unrest. In some instances, police with militarized gear, weapons and equipment have clashed with protestors, resulting in injuries to both citizens and officers. On top of this, officers have been ambushed and killed by lone gunmen apparently seeking to carry out acts of revenge.

In response to this violence, the American Bar Association approved the convening of this task force in July 2016 to advise its Board of Governors on how the legal profession can help to repair the mistrust that divides law enforcement and the communities they serve. The task force was formed in the wake of two highly publicized police shootings of civilians, which were followed by two incidents in which multiple police officers were shot to death in what appeared to be perverse acts of intended reprisal. On July 5, in Baton Rouge, Louisiana, Alton Sterling was fatally shot at close range while held down by police during an arrest. On July 6, near St. Paul, Minnesota, Philando Castile was shot and killed by an officer during a traffic stop. Video of these incidents brought outrage in many communities to a boiling point. On July 7, at a peaceful march in Dallas, Texas, in protest to both shootings, five police officers were killed in an ambush by an Army veteran who claimed to be angry about police shootings of black men. Ten days later, another gunman, possibly acting on similar motives, killed three police officers in Baton Rouge. As each of these tragedies unfolded, the nation's attention was drawn once again to the seemingly intractable problem of mistrust between law enforcement and communities of color. The need to identify and implement solutions for this dysfunction has never been more urgent.

The American Bar Association is uniquely positioned to help build consensus on criminal justice reform. ABA members serve as prosecutors, defense lawyers, judges and elected officials, at the local, state and federal levels in every jurisdiction; others are law professors, community leaders and civil rights lawyers. They come from diverse backgrounds and view the legal system from a wide range of political and ideological perspectives. They are affiliated with organizations ranging from the Federalist Society to the National District Attorneys Association to the American Civil Liberties Union to the NAACP Legal Defense and Educational Fund to the Black Lives Matter movement. This diversity of viewpoints among its membership allows the ABA to examine complex issues from multiple vantage points.

Although their viewpoints on policing and community relations may vary, one thing is certain: ABA members are committed to upholding the rule of law. That

shared commitment allows the ABA to provide forums for diverse voices to discuss challenges facing the justice system. In the course of our work, we have witnessed firsthand the value of this inclusive approach. A productive discussion about how to narrow the rift between communities of color and law enforcement requires all participants to approach each other with open minds and without hostility, and to base decisions on evidence rather than preconceived ideas, particularly because this is a context where emotions can run high.

While excessive use of force by police has harmed relationships with the people they serve, this report should not be construed as a sweeping denunciation of police methods and motives. It is indisputable that the demands placed on police officers are overwhelming, and they routinely carry out their duties with tremendous skill, diligence and compassion. They display heroism as first responders, rushing to fires and accidents, as well as natural disasters and terrorist attacks, to provide life-saving emergency medical care. And they must often make split-second decisions in dangerous and uncertain situations, particularly in neighborhoods where violent crime is prevalent, and drug and gun offenses are common. Law enforcement officers risk their lives every day to protect citizens, and they deserve our gratitude and respect.

We also recognize that in many jurisdictions, officers are called upon to do much more than carry out law enforcement tasks. Last summer, President Obama reminded the nation of the challenges police face during his eulogy for the five Dallas police officers who were ambushed:

We ask the police to do too much and we ask too little of ourselves. As a society, we choose to underinvest in decent schools. We allow poverty to fester so that entire neighborhoods offer no prospect for gainful employment. We refuse to fund drug treatment and mental health programs. We flood communities with so many guns . . . and then we tell the police “you’re a social worker, you’re the parent, you’re the teacher, you’re the drug counselor.” We tell them to keep those neighborhoods in check at all costs, and do so without causing any political blowback or inconvenience. Don’t make a mistake that might disturb our own peace of mind. And then we feign surprise when, periodically, the tensions boil over.<sup>1</sup>

At the same time, we must acknowledge that, throughout much of American history, many aspects of the criminal justice system were infected with racial bias. Indeed, many prominent law enforcement officials have recognized this reality. For example, FBI Director James Comey has stated: “all of us in law enforcement must be honest enough to acknowledge that much of our history is not pretty. At many points in American history, law enforcement enforced the status quo, a status quo that was often brutally unfair to disfavored groups.”<sup>2</sup> And as evidence presented in this report shows, the effects of past and present discrimination continue to plague minority communities.

Listening to diverse perspectives and taking them seriously are essential to understanding a problem and considering solutions. That is precisely the approach the ABA has taken in its previous efforts to improve the fairness and transparency of our criminal justice system. Previous reports have focused, for example, on charging youths with criminal offenses and practices that can result in unreliable convictions. The ABA has encouraged the U.S. Department of Justice to investigate misconduct by law enforcement officers and has stood firmly against racial, ethnic and religious profiling. Most relevant to the work of this task force, in July 2015, the ABA released a joint statement with the NAACP Legal Defense and Educational Fund affirming the need “to eradicate implied or perceived racial bias—in all of its forms—from the criminal justice system,”<sup>3</sup> and proposing numerous recommendations, including to facilitate dialogue among communities, law enforcement, prosecutors, the judiciary and elected officials; improve public understanding of the operation of our criminal justice system; and address and eradicate bias from all aspects of that system.<sup>4</sup> This report builds on that previous work.

This task force has understood from the outset that in addition to the ABA itself, many federal, state and local government agencies, distinguished task forces and committees, civil rights organizations, nonprofits, legal scholars and other experts have devoted a tremendous amount of time, resources and thought to analyzing law enforcement practices and procedures and their effect on minority communities, and are continuing to do so. As a result, considerable agreement has been reached about many of the reasons for the mistrust between those communities and law enforcement, including, for example, the prevalence of unconstitutional stops and arrests, excessive use of force, poor training and supervision of police, lack of accountability for police misconduct and disproportionately harsh treatment of people of color in charging and sentencing decisions. We note, however, that the mistrust runs both ways—police officers are often wary of communities in which violent crime is widespread, and where residents are sometimes hostile to law enforcement and sometimes not inclined to cooperate with investigations of wrongdoing.

More important, a consensus is emerging with regard to solutions—specific, concrete measures that police, prosecutors, lawmakers and others can take to reform the criminal justice system and address the mistrust between law enforcement and the communities they serve, while maintaining public safety. We have reviewed numerous meticulous, well-researched, comprehensive and nuanced reports that present such recommendations. Although many such reports exist, the ones we found most helpful in completing our work were produced recently by the President’s Task Force on 21st Century Policing and the Civil Rights Division of the Department of Justice.

The Task Force on 21st Century Policing was created by President Obama in December 2014. It released a comprehensive 116-page final report in May 2015 that contained numerous recommendations for reform, not just in police tactics but throughout the criminal justice system. The President’s Task Force was comprised of 11 distinguished members from law enforcement, legal academia and community, educational and civil rights organizations, and supported by a professional staff, consultants, technical advisors and the Department of Justice. It “conducted seven public

listening sessions across the country and received testimony and recommendations from a wide range of community and faith leaders, law enforcement officers, academics, and others to ensure its recommendations would be informed by a diverse range of voices.”<sup>5</sup> Many of the proposals set forth in the report are based on the efforts of local police departments to identify and adopt best practices.

In our view, the President’s Task Force report provides an ideal blueprint for reform in many cities. Indeed, the U.S. Conference of Mayors has encouraged municipalities to implement the recommendations of that report, and in response, many cities have published reports documenting their efforts. The willingness of police departments across the country to begin adopting the proposals of this report supports our view that it is a reliable foundation for reform.

Reports by the Justice Department’s Civil Rights Division can also help guide the way forward. During the past eight years, the Justice Department “opened 25 investigations into law enforcement agencies over issues like excessive force, racial bias and poor supervision, issuing reports choking with outrage.”<sup>6</sup> These lengthy reports found that unconstitutional and illegal police practices were widespread in cities including Ferguson, Miami, Cleveland, Baltimore and Chicago, and also contained many recommendations for reform.

We recognize, however, that some law enforcement officials, politicians and others may disagree with certain of the recommendations in the President’s Task Force and Justice Department reports. We also acknowledge that each jurisdiction faces different challenges; there are no one-size-fits-all solutions. Some have already improved training and implemented best practices for community policing. We should applaud police departments, city governments and community members that are getting it right while also urging those that are struggling to improve.

Building consensus about where reform is needed most and how best to achieve it is challenging. This is where lawyers are especially suited to help. The practice of law teaches us how to find, weigh and present evidence, evaluate whether policies and practices are consistent with the Constitution and other laws and mediate disputes by considering views on all sides and encouraging parties to find common ground.

After we reviewed relevant materials and reflected on how this task force could best contribute to national and local conversations about improving the criminal justice system, we concluded that this report should not focus on cataloging past or current injustices or developing lists of potential reforms. This work has already been done, and by task forces and agencies with far more resources. It is now time to build on the available information, analysis and recommendations found in the reports described above. Accordingly, we offer the following recommendations for the ABA, state and local bar associations, and minority bar associations, which we believe are aligned with their core strengths and their unique roles and responsibilities:

1. Encourage the adoption of best practices for reforming the criminal justice system.
2. Build consensus about needed reforms and work to carry them out.
3. Educate the public about how the criminal justice system works.

To implement these recommendations, bar associations should facilitate dialogue among stakeholders in the criminal justice system, including police officers, prosecutors, defense lawyers, judges, lawmakers, mayors, other elected officials, academics, community leaders and others. We believe the ABA and other bar associations have the credibility necessary to foster collaboration and compromise. But consensus building is not an abstract exercise. It requires people to meet face to face. The dialogue we urge bar associations to foster should occur in legal conferences, CLE panels and law school classes, in courthouses and legislative hearings, and in police stations, schools and community centers. Social media and other technological resources should be employed to reach as many stakeholders as possible. Our recommendations are explained in more detail in Section V below.

We concentrate in this report on reforms in the administration of criminal justice, but communities also have a critical role to play. Members of the public should, for example, step forward as witnesses, serve on juries and participate in community policing initiatives. Cooperation between citizens and police yields safer communities as crimes are reported, evidence is provided and investigations are conducted without fear or favor.

Finally, although the focus of this report is on the gulf of mistrust between minority communities and law enforcement, it speaks to a far broader audience. The task force was not constituted to respond to the narrow concerns of a particular community. This report is for all of us. All Americans benefit when our criminal justice system lives up to its ideals—when the rule of law is administered impartially and when law enforcement practices, both inside and outside of the courthouse, are free from bias and excessive force. Both the police and the public are made safer when the system is not, nor is perceived to be, discriminatory.

This report proceeds in four parts. We begin with a brief description of the task force, its mandate and the work it has undertaken. Next, we explore the factors that contribute to distrust between minority communities and law enforcement, and the recommendations that have been developed by the President’s Task Force, the Justice Department and others in order to promote transparency and accountability and to eradicate misconduct and racial bias. We then discuss in greater detail some of the unique challenges of policing, and conclude by explaining how the legal profession can carry out the recommendations outlined above.

## **II. THE TASK FORCE**

Outgoing ABA President Paulette Brown and incoming ABA President Linda Klein formed the Task Force on Building Public Trust in the American Justice

System in July 2016 and entrusted it with the following mandate: “To strengthen the rule of law by collaborating with other organizations, including bar associations, to increase the public’s trust in the justice system.”

Confidence in the rule of law can be enhanced by faithfulness to established constitutional principles and enforcement of existing laws. Much of what is wrong in our practices can be cured by a greater fidelity to what is right in our laws. Nevertheless, reforms are necessary. In this report, we identify 12 areas in which changes to policies and practices can strengthen frayed relationships between law enforcement and communities of color. These are not meant to be comprehensive, but they appear to us to be the areas in which reforms are most needed. In many areas, however, more research and analysis are required. For example, the collection of more data about police activity would facilitate the development of better practices for officer training, supervision and discipline.

But policing is only part of the story. Race is relevant in nearly all stages of the criminal justice process, most notably in charging decisions, pretrial release, plea bargaining and sentencing. Racial disparities in these areas have been well-documented, even if the source of the disparities is not clearly understood. We must commit ourselves to understanding how and why race affects outcomes in the criminal justice system. This report represents only the beginning of what we hope will be a continuing dialogue to repair the trust between communities of color and law enforcement.

That dialogue should not be limited to the criminal justice system itself. It is not within the mandate of this task force to evaluate how reforms in education, housing, public health and poverty alleviation could also contribute to improved relations between minority communities and the police, but it would be naïve to suppose that broader societal challenges have no relevance here. Context matters. Communities that are deprived of resources present risks not just to residents, but also to the law enforcement officers assigned to those areas. When tensions run high, negative interactions are far more likely.

We also observed that, although outrage in response to excessive use of force may seem to be at an all-time high, police misconduct and poor police tactics have not arisen recently. And they will not be ameliorated quickly or without courageous and sustained effort. Through this report, we hope to spark a sense of urgency within the legal profession. As the architects and administrators of the criminal justice system, members of the profession have a special responsibility to ensure that the system provides equal justice to all members of society.

While changes in policies, practices and laws will certainly contribute to progress, institutional change alone is not sufficient so long as the criminal justice system is administered by human beings. We must improve how people of different backgrounds relate to and empathize with one another. It is critical for everyone to examine and question attitudes and beliefs that distance one citizen from another. In short, we must change the culture in law enforcement and elsewhere in the criminal justice system.

To complete this report, the task force and its team of researchers met with and interviewed prosecutors, public defenders, police chiefs, rank-and-file police officers and academics, among other stakeholders in the criminal justice system. The task force and its team also reviewed hundreds of legal cases, government reports, academic studies, news articles and other sources. A full bibliography is appended to this report.

The task force is chaired by Theodore V. Wells, Jr. of Paul, Weiss, Rifkind, Wharton & Garrison LLP.\* Monique Dixon of the NAACP Legal Defense and Educational Fund served as the task force reporter. The task force includes representatives from law enforcement, prosecutors' offices, the judiciary, state and federal government, law firms and nonprofits:

- Paulette Brown, Immediate Past President, American Bar Association (ex officio)
- Leigh-Ann A. Buchanan, Executive Director, Venture Café Miami
- George C. Chen, Partner, Bryan Cave LLP
- Kevin Curtin, Senior Appellate Counsel, Middlesex District Attorney's Office
- Kevin Davis, Commissioner, City of Baltimore Police Department
- Hon. Nelson A. Diaz, Dilworth Paxton LLP, Partner (former Judge, Philadelphia Court of Common Pleas)
- John DiManno, Assistant Attorney General, Connecticut Attorney General's Office
- Shirley Franklin, CEO, Purpose Built Communities (former Mayor, City of Atlanta)
- Hon. Marcella A. Holland, Senior Judge, Maryland Circuit Court, 8th District
- Linda A. Klein, President, American Bar Association (ex officio)
- John McKay, Partner, Davis Wright Tremaine (former U.S. Attorney, Western District of Washington)
- Judy Perry Martinez, Chair, American Bar Association Commission on the Future of Legal Services
- Lauren Stiller Rikleen, President, Rikleen Institute for Strategic Leadership
- Tricia Tingle, Associate Director, U.S. Department of the Interior, Bureau of Indian Affairs, Office of Tribal Justice Support

### **III. UNDERSTANDING PAST AND CURRENT PROBLEMS AND THE WAY FORWARD**

#### **A. Overview**

Distrust between law enforcement and the communities they serve—particularly black and Hispanic communities—is not a new phenomenon.<sup>7</sup> For example, the Kerner Commission concerning the riots that engulfed Chicago, Detroit, Los Angeles, Newark and other cities in 1967 found:

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\* The Paul, Weiss lawyers who assisted Ted Wells with the preparation of this report are: David W. Brown, Justin Anderson, Kaveri Vaid, Charles Hamilton, Luke Murumba, Malcolm Wells, Christopher Andrews and Alexandra Gordon.



To some Negroes police have come to symbolize white power, white racism and white repression. And the fact is that many police do reflect and express these white attitudes. The atmosphere of hostility and cynicism is reinforced by a widespread belief among Negroes in the existence of police brutality and in a “double standard” of justice and protection—one for Negroes and one for whites.<sup>8</sup>

In 1991, the videotaped beating of motorist Rodney King by Los Angeles police officers again thrust issues of race and excessive use of force by police into the spotlight.<sup>9</sup> When four officers were acquitted of nearly all state criminal charges in 1992, Los Angeles exploded in riots in which 55 people were killed and more than 2,000 were injured.<sup>10</sup>

In recent years, police treatment of racial minorities has again blazed into the forefront of our national consciousness. It has dominated media coverage, political conversations and policy debates, as well as everyday conversations among neighbors, co-workers and friends.

Americans have been riveted by highly publicized incidents in which black people were killed by police use of lethal force or while in police custody. Prior to the establishment of this task force in July 2016, these tragedies included the deaths of Michael Brown (Ferguson, Missouri 2014), Yvette Smith (Bastrop, Texas 2014), Eric Garner (New York, New York 2014), Sandra Bland (Hempstead, Texas 2015), Walter Scott (North Charleston, South Carolina 2015), Tamir Rice (Cleveland, Ohio 2014), Laquan McDonald (Chicago, Illinois 2014), Freddie Gray (Baltimore, Maryland 2015), Alton Sterling (Baton Rouge, Louisiana 2016) and Philando Castile (St. Paul, Minnesota 2016). In September 2016, two more fatal shootings by police made headlines: Keith Lamont Scott (Charlotte, North Carolina) and Terence Crutcher (Tulsa, Oklahoma). Many of these individuals were killed by white officers. Many were either unarmed or appeared to pose no immediate threat to justify the use of lethal force. Many of their deaths were captured on video by the police and bystanders, and this footage was rapidly disseminated and widely viewed on news broadcasts and social media. The surfeit of shocking videos stoked anger toward law enforcement in many communities and contributed to the feeling that black lives are not considered valuable by the police. We describe three of these incidents below.

On October 20, 2014, Chicago police officers confronted 17-year old Laquan McDonald, who had been breaking into cars and who was walking down a street armed with a knife.<sup>11</sup> Officer Jason Van Dyke responded to a call for back up, and within seconds of arriving on the scene, shot McDonald sixteen times.<sup>12</sup> The police initially ruled the shooting a justifiable homicide, based on reports from Van Dyke and other officers that McDonald had lunged at him.<sup>13</sup> But a coroner’s report obtained by reporters showed that McDonald had been shot multiple times in the back.<sup>14</sup> Following dogged attempts by journalists to obtain police dash cam video of the incident, including

Freedom of Information Act requests and a lawsuit, the city of Chicago finally released the video in November 2015.<sup>15</sup> This footage showed that McDonald had been walking away from Van Dyke when he was shot, and that he had been shot multiple times while lying on the pavement.<sup>16</sup> Van Dyke was subsequently indicted by a grand jury on six counts of first degree murder.<sup>17</sup>

On July 5, 2016, Baton Rouge police officers Howie Lake II and Blane Salamoni responded to a report from a 911 caller who stated that a man selling CDs was behaving in a threatening manner with a gun in the parking lot of a convenience store.<sup>18</sup> When the police arrived at the scene, they encountered Alton Sterling, 37, who sold CDs there.<sup>19</sup> An altercation occurred between Sterling and the officers, who used a Taser to subdue him and then forced him to the ground.<sup>20</sup> Videos taken by bystanders do not conclusively establish what happened next, but they show the two officers kneeling on top of Sterling and attempting to restrain him.<sup>21</sup> It appears that one officer shouted that Sterling was “going for the gun” just before multiple fatal shots rang out.<sup>22</sup> A gun was recovered from Sterling after he was shot, but witnesses reported that he had not been holding it prior to the struggle with the police.<sup>23</sup> A federal investigation into the conduct of the officers has not yet been concluded.<sup>24</sup>

On July 6, 2016, 32-year old Philando Castile, a nutrition services supervisor at a high school, was driving through a suburb of St. Paul, with his girlfriend Diamond Reynolds in the passenger seat and her four year old daughter in the back.<sup>25</sup> They were pulled over by officer Jeronimo Yanez and his partner; shortly thereafter, Yanez fired multiple shots into Castile at close range through the open driver’s side window.<sup>26</sup> Reynolds began live streaming the event on Facebook after Castile was fatally wounded.<sup>27</sup> She can be heard on the video stating that Castile had warned Yanez that he was in possession of a pistol he was licensed to carry, and that Castile had been getting his license and registration when he was shot.<sup>28</sup> The video shows Castile bleeding to death, while Yanez continues to point his pistol at him and does not administer first aid. Reynolds is heard exclaiming, “Oh my god, please don’t tell me he’s dead.”<sup>29</sup> She was then handcuffed and taken into police custody. Media reports revealed that in the 14 years before his death, Castile had been stopped by Minnesota police 52 times, mainly for minor charges such as driving with a revoked license.<sup>30</sup> In November 2016, Officer Yanez was charged with second-degree manslaughter.<sup>31</sup>

Protests have erupted in response to these shootings and deaths, not just in the cities in which they occurred, but nationwide.<sup>32</sup> Outrage has been expressed in marches, vigils and other demonstrations led by community activists, clergy and others.<sup>33</sup> Some of the protests occurred in the immediate aftermath of police-involved death; others occurred in the wake of subsequent developments, such as grand jury decisions not to indict officers, which were perceived to reflect bias in the justice system. The Black Lives Matter movement emerged to lead many of the protests and became a vocal force in American politics; the chant “hands up, don’t shoot” has echoed through many demonstrations.

Elected officials, the media and activists have criticized the tactics used in some cities in response to demonstrations, blaming law enforcement for inflaming

tensions instead of defusing them. The Ferguson police, for example, were decried for deploying hundreds of officers in military gear, for using excessive force against protestors and for jailing demonstrators for exercising their First Amendment rights.<sup>34</sup>

Following certain deaths, protests gave way to violence and civil unrest, including vandalism, looting and arson. Police officers and civilians were injured, and hundreds of suspects were arrested.<sup>35</sup> Such unrest occurred in Charlotte, Milwaukee, Ferguson, Baltimore, St. Paul and Baton Rouge and other cities as well. In some instances, curfews were imposed and the National Guard was deployed to restore order.<sup>36</sup>

Against this backdrop of violence by police and rioters, we may be witnessing the emergence of another disturbing trend: ambushes of police officers by individuals who profess to be seeking revenge for police-involved deaths. We highlight three such incidents below, but it is important to note that other fatal police ambushes have occurred in recent years.

In December 2014, Ismaaiyl Brinsley killed two New York City Police Department officers in Brooklyn by approaching their patrol car and firing four shots through the passenger window.<sup>37</sup> Brinsley, who committed suicide shortly thereafter, had posted messages on his Instagram account shortly before the murders stating that he would kill police officers as retribution for the deaths of Michael Brown and Eric Garner.<sup>38</sup> In the weeks prior to Brinsley's murderous actions, grand juries had declined to indict the officers who were involved in the deaths of Brown and Garner, which perhaps contributed to his desire to attack the police.

On July 7, 2016, Micah Johnson, an Army veteran and reservist, fired on a group of police officers in Dallas who were on-duty during a peaceful protest in response to the killings of Alton Sterling and Philando Castile.<sup>39</sup> Johnson killed five officers and wounded nine others, making this the most deadly incident for U.S. police officers since September 11, 2001. During a standoff after the attack, Johnson "told a hostage negotiator that he was upset about the recent police shootings of two black men and that he wanted to kill white people, especially police officers, Dallas Police Chief David Brown said."<sup>40</sup>

On July 17, 2016, in Baton Rouge, Gavin Long shot six police officers, killing three and injuring three others.<sup>41</sup> The officers had been responding to a report of a suspicious person carrying a rifle when Long opened fire on them. In an ensuing shootout, a SWAT officer shot and killed Long. Although Long's motives were not entirely clear, evidence suggests that he may have intended to retaliate for police shootings of black men. For example, in the weeks before his death, he posted rambling videos on YouTube in which he, among other things, called the murders of the five police officers in Dallas on July 5 an act of "justice" and stated that all revolutions "have been successful through fighting back through bloodshed."<sup>42</sup>

In light of evidence Brinsley, Johnson and Long left behind, and reports from people who knew them, all three may have been suffering from mental illness. The

fact that unstable individuals may fixate on such shootings and engage in violent acts provides another reason that that all Americans should want to see police shootings reduced.

As a result of the ambushes of police, officers throughout the nation feel less safe. A January 2017 Pew poll found that 93% of officers say their colleagues are concerned about their personal safety.<sup>43</sup> In addition, 75% of officers surveyed stated that there is increased tension between black communities and officers, and 86% reported that they believe their jobs are more difficult now due to fatal encounters between black people and law enforcement.<sup>44</sup>

It would be myopic to view the distrust between law enforcement and communities as merely reflecting tension between white police officers and black residents. The story is more complicated. Unconstitutional and overly-aggressive policing tactics have been prevalent in cities with both white and black political leadership. In addition, not all of the deaths that have infuriated communities have been committed by white officers. For example, Keith Lamont Scott was shot by a black officer. And the retaliatory shootings did not kill only white officers. One of the officers murdered in the December 2014 ambush in New York was Hispanic and the other was Asian, and one of the officers killed in the July 2016 shooting in Baton Rouge was black.

In short, all Americans should be distressed by the recent spate of police-involved deaths, civil disturbances and ambushes of police officers, and concerned that such tragic events might recur, possibly with increasing frequency. Violence begets violence. As ABA members, we believe that promoting the rule of law, proper police practices and respect for law enforcement can make all communities safer.

## **B. Insights and Recommendations from Recent Government Reports**

There is much evidence to show that racial minorities believe the criminal justice system does not treat them fairly. According to a June 2016 Pew Research Poll, 84% of blacks reported their belief that blacks are treated less fairly than whites in their interactions with the police, and three-quarters say blacks are treated less fairly in the courts.<sup>45</sup> A January 2015 Reuters poll reported that 69% of blacks and 54% of Latinos believe that the police unfairly target minorities, compared to 29% of whites who believe the same.<sup>46</sup>

Communities of color have good reason to question the fairness of their interactions with the criminal justice system. Overwhelming evidence, much of which has been gathered recently by the federal government, establishes that the criminal justice system exerts a heavier toll on members of racial minorities. That burden is perhaps most notable in the context of policing, but it extends throughout the criminal justice system, culminating in lengthy terms of incarceration for minorities. It is thus not surprising that people who believe that they are being treated unfairly in the criminal justice system would look upon the police with fear or fury.

Understanding the factors that contribute to the perception and reality of unfairness is a necessary first step in rebuilding trust. In recent years, the federal government has devoted significant attention and resources to this issue, focusing most urgently on the problem of unlawful and improper policing. As noted above, the President’s Task Force on 21st Century Policing produced a comprehensive report in May 2015 that identified causes for the rifts between police and communities, proposed best practices in policing to address those fissures and made recommendations for implementing reforms. The Justice Department has been particularly active, launching more than two dozen investigations of municipal police departments, and issuing reports documenting unconstitutional practices in cities including, among others, Ferguson, Miami, Cleveland, Baltimore and Seattle.<sup>47</sup> In addition, certain cities, including Chicago and San Francisco, have created their own task forces to investigate police practices and make recommendations.<sup>48</sup>

These reports are not without their detractors. Many have argued that a few “bad apples” have unfairly tarnished the reputation of law enforcement officers, the vast majority of whom conduct themselves professionally and respectfully. Others believe that police officers are unfairly criticized for socio-economic problems that do not originate in the criminal justice system. It is certainly true that police officers are called upon to intervene in dangerous settings, where the essential building blocks of civil society are often unstable or nonexistent. Keeping the peace under those conditions is not an easy task, and we should not minimize the burden we place on police. We must also acknowledge that violent crime has decreased significantly throughout the United States in the past 25 years, and that minority communities have greatly benefitted from reduced crime rates. Better police strategies and tactics have undoubtedly contributed to this result, as many in law enforcement have pointed out.

It is beyond the mandate of this task force to adjudicate who has the better of this dispute. This report is intended to consider what the bar can do to rebuild trust between our communities of color and our law enforcement agencies. To restore confidence, we must first understand why those communities feel disconnected from the criminal justice system in the first place. It is essential that we recognize that the problem exists and that the reasons for its existence are systemic. For that insight, we turn to the work that has been done with such care by the President’s Task Force and Justice Department. Those reports identify facts and recommendations that we consider most relevant to the question we are examining. We have placed them in 12 categories, which we discuss below. Although we could write individual reports on each of the below categories, we have purposefully kept our discussion high-level, briefly outlining each problem and highlighting one or two proposed solutions.

### **1. Frequency of investigative stops lacking reasonable basis.**

Police officers conduct investigative stops of members of minority communities at high rates. Statistics bear out a stark disparity between the rate at which whites are stopped by police and the rate at which blacks are. Being stopped by the police has become a routine matter for many people of color and a source of pain and frustration. Too often, those interactions are not justified by a legitimate law

enforcement purpose. As the Justice Department concluded in its report on Baltimore, police officers “frequently make[] investigative stops without reasonable suspicion of people who are lawfully present on Baltimore streets.”<sup>49</sup> The frequency of these interactions and the often improper reasons for them generate feelings of harassment.

As the President’s Task Force recognized, “[t]hough law enforcement must concentrate their efforts in [high-crime] neighborhoods to maintain public safety, sometimes those specific efforts arouse resentment in the neighborhoods the police are striving to protect.”<sup>50</sup> That is why the President’s Task Force proposed measures to ensure that investigative stops are made for good cause. It proposed that police forces “refrain from practices requiring officers to issue a predetermined number of tickets, citations, arrests, or summonses, or to initiate investigative contacts with citizens for reasons not directly related to improving public safety, such as generating revenue.”<sup>51</sup> Ensuring that investigative stops are initiated for good and valid reasons promotes respect for those conducting the stops.

## **2. Confrontational and antagonistic police interactions.**

The nature and tone of the contacts between police officers and members of minority communities also affects perception. It should be common ground that police officers have no legitimate basis to use offensive language or racial slurs when conducting investigative stops. But an encounter need not be so obviously inappropriate for it to have a negative effect on police-community relations. When police officers project hostility or issue unexplained commands, members of the community perceive a lack of respect from the officer and often respond aggressively. To counteract that negative feedback loop, the President’s Task Force urged law enforcement to recognize the “importance of language used” and to “adopt policies directing officers to speak to individuals with respect.”<sup>52</sup> Interacting with communities in a professional and courteous way presents an opportunity to improve perceptions on all sides of the encounter.

In addition, the increasingly prevalent militarization of policing furthers the perception of hostility. In recent years, many police departments have felt compelled to adopt quasi-military weapons, apparel and tactics in the face of threats presented by terrorism and mass shootings. It is an unfortunate and tragic reality for many police departments that they must respond to such extreme forms of violence. Although common sense dictates that police departments be equipped to face the challenges presented in their localities, it is nevertheless important to tailor police responses to the threat presented. Excessive reliance on a militaristic approach to policing takes a toll on the communities served and creates tension between police and community members. In its report on New Orleans, for example, the Justice Department observed that “[c]ommunity members often raised specific concerns over [police] task forces, whose members wear distinctive military-style uniforms and are referred to throughout the City (and colloquially within the police department) as ‘jump out boys.’”<sup>53</sup> Footage of the protests in Ferguson and Baton Rouge showed officers looking like soldiers readying for battle.<sup>54</sup> This suggests, rightly or not, that they are at war with many in the communities they serve. To address the perceptions caused by the militarization of police forces, the President’s Task Force proposed recommendations including the creation of policies for

policing mass demonstrations that employ a continuum of managed tactical resources designed to minimize the appearance of a military operation and avoid using provocative tactics that undermine civilian trust.

### **3. High rates of illegal and discretionary arrests.**

Police officers also arrest members of minority communities at high rates. Justice Department reports suggest that many of these arrests lack probable cause. For example, in Baltimore, the Justice Department found that supervisors and prosecutors dismissed 57% more resisting arrest charges, 52% more trespassing charges, 33% more failure to obey charges, and 17% more disorderly conduct charges when the arrestee was black.<sup>55</sup> The Justice Department found that officers in Newark frequently “detain[ed] and arrest[ed] individuals who lawfully object to police actions or behave in a way that officers perceive as disrespectful,”<sup>56</sup> and that officers in Newark also made illegal “contempt of cop” arrests.<sup>57</sup> The Justice Department also found that officers arrested minorities for minor offenses at far higher rates than whites.<sup>58</sup>

Police officers generally have broad discretion to make such arrests. There might be good reasons for “zero tolerance” policies in certain situations, but it is at least equally important to provide justice on an individual level. The combination of illegal arrests and an unforgiving approach to exercising police discretion can discredit law enforcement by creating a sense of oppression. For that reason, the President’s Task Force recommended that police departments “consider adopting preferences for seeking ‘least harm’ resolutions, such as diversion programs or warnings and citations in lieu of arrest for minor infractions.”<sup>59</sup> A police force that reduces unjustified arrests and exercises reasoned discretion when making arrests for minor crimes is more likely to find support in the community it serves.

### **4. Excessive use of force.**

Police officers perform dangerous work that can require the use of lethal and nonlethal force. In some circumstances, police and community safety requires the judicious use of force. But when force is exercised without justification or restraint, it undermines confidence in law enforcement. Multiple Justice Department reports have found that police often resort to force too quickly.<sup>60</sup> In Cleveland, for example, police officers were found to have used “force—including Tasers, OC Spray, and strikes to a suspect’s body—against individuals who pose little, if any, threat, or who offer minimal resistance.”<sup>61</sup> This excessive reliance on force is not distributed evenly across the population. It is now well-documented that when police officers use force, particularly lethal force, it is most frequently employed against members of minority communities. For example, in its report on New Orleans, the Justice Department found “27 instances between January 2009 and May 2010 in which [police] officers intentionally discharged their firearms at people, [and] all 27 of the subjects of this deadly force were African American.”<sup>62</sup> The analysis of data from other cities shows a similar disproportionality. And to many Americans, the shootings of Alton Sterling and Philando Castile, which contributed to the convening of this task force, appeared to be examples of unjustified uses of lethal force by police.

When unnecessary force is routinely used, communities can “feel as if they are under siege. Then, instead of seeing the police as an agency that is there to protect them, they come to see officers as suspicious and threatening.”<sup>63</sup> To counteract that effect, the President’s Task Force has encouraged police departments to ensure that when force is used, it is justified. It has urged training “on use of force” that “emphasize[s] de-escalation and alternatives to arrest” and “annual training that includes shoot/don’t shoot scenarios and the use of less than lethal technologies.”<sup>64</sup> Ensuring the appropriate use of force in civilian encounters can enhance the legitimacy of policing and build trust and respect.

## **5. Harsh treatment in the criminal justice system.**

Statistics show minorities are often treated more harshly in the criminal justice system. At multiple stages in the process—arrest, bail, plea bargaining, and sentencing—the outcomes for minorities are harsher than for whites. In sentencing, for example, the United States Sentencing Commission reported in 2012 that black male defendants received sentences nearly 20% longer than “similarly situated” white male defendants and were 20% less likely to receive a non-government sponsored sentence below the sentencing guidelines.<sup>65</sup>

The reasons for high rates of prosecution and incarceration in black and Hispanic communities are complex and contested. So too are the grounds for imposing lengthy sentences for certain crimes. Regardless of the position one takes on those questions, however, the impact of frequent prosecutions and long sentences is the same: it takes a disproportionate toll on minority communities. It is not surprising that frequent prosecutions and outcomes that appear unnecessarily harsh can create a sense that the criminal justice system is biased and exists to serve interests other than those of community safety. The nation’s attention has been focused in recent years on reevaluating practices that contribute to harsh outcomes in criminal cases. This process is long overdue and should be encouraged. Improvements in the perceived fairness of charging decisions, pretrial detention, plea offers and sentencing will enhance the credibility of the system as a whole, and particularly with communities that view it as racist and oppressive.

## **6. Law enforcement hiring and promotion.**

It is essential that police departments make good decisions about who fills their ranks and who is promoted to leadership. Judgment and temperament are essential to the job. Tensions can often run high in policing, and it is essential that those who are predisposed to escalation and confrontation should not be given authority over civilians. In this vein, the President’s Task Force has recommended that law enforcement “agencies place value on both educational achievements and socialization skills when making hiring decisions.”<sup>66</sup> Community engagement has also emerged as a critical factor to consider when making hiring and promotion decisions. Those who are able to interact well with the communities they serve can be ambassadors who enhance understanding on both sides of law enforcement interactions. After the hiring decision has been made, these factors should be incorporated in performance reviews and promotion decisions.



“[E]valuating, and promoting officers based on their ability and track record in community engagement—not just traditional measures of policing such as arrests, tickets, or tactical skills—is an equally important component of the successful infusion of community policing throughout an organization.”<sup>67</sup> Taking into account the importance of officer-community engagement when making hiring and promotion decisions can lay the foundation for stronger officer-community relationships over time.

## **7. Law enforcement training.**

After the hiring decision is made, initial and ongoing training is necessary to provide police officers with the tools they need to provide fair and effective services to communities. It is widely recognized that “[t]raining is the foundation for ensuring that officers are engaging in effective and constitutional policing.”<sup>68</sup> But deficiencies in training in several municipalities have been documented in reports issued by the Justice Department. In Chicago, for example, the Justice Department found that police officers were not provided

adequate guidance to understand how and when they may use force, or how to safely and effectively control and resolve encounters to reduce the need to use force. . . . [T]hese failures result in officers not having the skills or tools necessary to use force wisely and lawfully, and they send a dangerous message to officers and the public that unreasonable force by [police] officers will be tolerated.<sup>69</sup>

Poor training can yield violent and illegal results, thereby undermining confidence in the criminal justice system. That is why the President’s Task Force has urged the federal government to “support research into the development of technology that enhances scenario-based training, social interaction skills, and enables the dissemination of interactive distance learning for law enforcement.”<sup>70</sup> One area that has been specifically identified for training is the reduction of implicit bias—that is, forms of bias that are subconscious but nevertheless pernicious. According to the President’s Task Force, “[t]o achieve legitimacy, mitigating implicit bias should be a part of training at all levels of a law enforcement organization to increase awareness and ensure respectful encounters both inside the organization and with communities.”<sup>71</sup> A renewed emphasis on training can promote both the effectiveness of policing and its perceived fairness and impartiality.

## **8. Maintaining officer wellness and safety.**

Policing is a demanding job that can impose emotional and physical strain on police officers. As the President’s Task Force observed, “[m]ost law enforcement officers walk into risky situations and encounter tragedy on a regular basis . . . . As a result, physical, mental, and emotional injuries plague many law enforcement agencies.”<sup>72</sup> High rates of depression, physical injuries and even suicide have been reported among police officers. When “officers do not feel they are respected, supported, or treated fairly,” an already stressful job can become even more difficult.<sup>73</sup> And when

the effects of stress produce negative interactions with citizens, the reputations of entire police departments can be tarnished. Recognizing that extraordinary demands are placed on police officers, the President's Task Force recommended that police departments take steps to protect both physical safety, including through the use of body armor, and mental health. It also suggested "continuing research into the efficacy of an annual mental health check for officers, as well as fitness, resilience, and nutrition."<sup>74</sup> Supporting the safety and physical and mental health of police officers provides a basis for them to do a difficult job with professionalism and respect.

## **9. Supervision and oversight of law enforcement.**

Inadequate supervision can create an environment where deviations from established police department policies or best practices can become commonplace. By the same token, competent supervision can root out improper conduct and ensure that high standards are maintained. As the Justice Department observed in its report on Chicago, "[p]atrol officers must receive proper supervision and guidance in order to ensure that they are engaging in constitutional and effective policing and that they are held accountable if they engage in misconduct."<sup>75</sup> Competent supervision by more senior officials within police departments contributes to maintaining a culture of professionalism.

There is also a role for external oversight. The perception that police departments constitute law unto themselves undermines public trust. To counter that perception, numerous municipalities have taken steps to provide external supervision over police. The President's Task Force observed that "[m]any cities have established an independent citizen oversight board to review complaints of police misconduct. . . . The continuum for civilian oversight ranges from limited authority to reviewing and making recommendations to boards that have investigative and subpoena powers."<sup>76</sup> There is no single appropriate model for external oversight; much will depend on the needs and resources of local communities. Along with internal supervision, external review can provide a critical layer of accountability and lend legitimacy to the work of the police.

## **10. Community policing.**

Distrust between minority communities and police officers can be exacerbated by practices that create distance between the two groups. Many officers do not live in the communities they serve. They often lack opportunities to engage with community members in non-hostile ways, for example through sports leagues or informal social events and meals. That is why the President's Task Force has promoted the adoption of community policing, which "combines a focus on intervention and prevention through problem solving with building collaborative partnerships between law enforcement agencies and schools, social services, and other stakeholders."<sup>77</sup> This approach encourages police and community members to open direct channels of communication between individuals (police-citizen) and institutions (government agency-community organization). Where this approach has been adopted, both police and community members report greater satisfaction with their interactions.

## **11. Accountability for police misconduct.**

The criminal justice system's legitimacy is undermined by the perception that law enforcement officers are not held to account when they violate the law. Opaque procedures and a lack of transparency about outcomes can cause members of the community to question the basis on which investigations into allegations of police misconduct are conducted. Similarly, non-lawyers may not understand the legal standards that apply when prosecutors and grand juries consider whether criminal charges based on such allegations are warranted. Those concerns are heightened by the appearance that the police officers and prosecutors handling misconduct allegations have an institutional bias to exonerate accused officers. Recent reports have borne out the legitimacy of this concern.<sup>78</sup> For example, in its report on Cleveland, the Justice Department found it "[d]eeply troubling . . . that some of the specially-trained investigators who are charged with conducting unbiased reviews of officers' use of deadly force admitted to us that they conduct their investigations with the goal of casting the accused officer in the most positive light possible."<sup>79</sup>

We do not express an opinion here on the merits of any of the charging decisions or the outcomes of any of the trials related to recent high-profile police-involved deaths, except to observe that many Americans perceive that the criminal justice system routinely permits police officers to use excessive force against minorities with impunity. Real or perceived conflicts of interest can undermine the appearance of fairness in how officer misconduct is investigated and prosecuted. The consequences can be significant. For example, the shooting of Michael Brown by Officer Darren Wilson led to mass protests, including some that resulted in violence and destruction of property. The decision of a grand jury not to indict Officer Wilson was seen by some protestors as further evidence of a system unable to hold its own accountable. Nevertheless, Officer Wilson was also investigated and subsequently found to have acted in self-defense by the Civil Rights Division of the Justice Department, thus calling into doubt the protestors' reaction to the grand jury's decision.

The President's Task Force has emphasized the importance of independent review, particularly "in cases of inappropriate deadly force and in-custody death," in order to "demonstrate the transparency to the public that can lead to mutual trust between community and law enforcement."<sup>80</sup> In some cities, investigations and prosecutions of police misconduct are already handled by independent groups of investigators and prosecutors who are specialists in the field. Other municipalities do not have dedicated units responsible for police misconduct and must seek independent review from other means, perhaps by involving law enforcement officials from another jurisdiction. Regardless of how potential wrongdoing by police is investigated, the public should recognize that each case presents unique facts, that investigators and prosecutors need time to make accurate and fair decisions, and that a rush to judgment betrays fidelity to the rule of law. However achieved, independent and transparent investigations and charging decisions will improve confidence in the system, particularly where the facts and law do not support a criminal prosecution.

## **12. The need for further data collection and analysis.**

No two municipalities are the same. Police departments across the country face a wide range of challenges and priorities. For these reasons, reforms that are appropriate in one jurisdiction will not necessarily be identical to those needed in another jurisdiction. Identifying those differences is a critical first step in fostering a culture of reform. To take that step, there must be a renewed focus on gathering and analyzing data so that patterns can be recognized, bad practices identified and reforms implemented.

The Justice Department has recognized that many jurisdictions, and indeed the federal government itself, lack sufficient data or do not analyze it effectively. For example, in its report on Baltimore, the Justice Department observed that the police department “has conducted virtually no analysis of its own data to ensure that its enforcement activities are non-discriminatory.”<sup>81</sup> FBI Director James Comey has pointed out that the federal government lacks comprehensive data on police-involved shootings.<sup>82</sup> Thus, while the number of tragic deaths caused by police use of lethal force that are captured on film has increased, this may be the result of technology (particularly cell phone cameras) rather than indicative of a surge in police use of lethal force.

Where data collection and analysis are lacking, it is harder to diagnose problems and identify solutions. To remedy such deficiencies, the President’s Task Force recommends “[e]xpanded research and data collection” because they are “necessary to knowing what works and what does not work, which policing practices are effective and which ones have unintended consequences.”<sup>83</sup> Data analysis is not solely the responsibility of police departments. Public and private institutions, including the press, have a role to play in scrutinizing data and making recommendations based on analysis. A more rigorous approach to gathering and analyzing data will allow localities to identify patterns of concern and tailor appropriate reform measures.

## **IV. ACKNOWLEDGING THE UNIQUE CHALLENGES OF POLICING**

As public outrage over police shootings has escalated, many police officers have come to feel like they are being attacked for the shortcomings of a minority. Two thirds of police officers who responded to a January 2017 Pew poll view the recent high-profile police-involved killings as isolated incidents.<sup>84</sup> In the same poll, 68% of surveyed officers reported viewing the protests of such events as motivated in large part by anti-police bias (although 69% of black officers believe the protests were motivated in part by “a genuine desire to hold police accountable”).<sup>85</sup> Critics of the protests have emphasized that some demonstrators have disrespected the police (for example, by calling them “pigs”), and worse, advocated violence against officers.<sup>86</sup> The January 2017 Pew poll found that two-thirds of officers reported having been verbally abused by a member of the community they serve.<sup>87</sup>

Some leaders in law enforcement have asserted that officers have recently become more reluctant to fight crime because they are fearful of becoming subjects of viral videos. In a speech in 2015, for example, FBI Director James Comey stated:

In today's YouTube world, are officers reluctant to get out of their cars and do the work that controls violent crime? Are officers answering 911 calls but avoiding the informal contact that keeps bad guys from standing around, especially with guns?

I spoke to officers privately in one big city precinct who described being surrounded by young people with mobile phone cameras held high, taunting them the moment they get out of their cars. They told me, "We feel like we're under siege and we don't feel much like getting out of our cars."<sup>88</sup>

Comey went on to acknowledge that he did not know whether such developments were changing police behavior. Nevertheless, he concluded: "I do have a strong sense that some part of the explanation is a chill wind blowing through American law enforcement over the last year. And that wind is surely changing behavior."<sup>89</sup>

As discussed in our Introduction, society may be asking too much from police officers today. Officers that work in communities that are beset by high crime, poverty, addiction, poor educational resources and lack of economic opportunity are often required to stand in for parents, teachers, social workers, drug counselors and mental health professionals. For these reasons, restoring trust in law enforcement is one of only many interventions that are necessary to improve struggling communities.

## V. RECOMMENDATIONS

### **Recommendation 1. Encourage the adoption of best practices for reforming the criminal justice system.**

To accomplish this goal, bar associations should convene law enforcement officials, prosecutors, defense lawyers, judges, elected officials, law professors, community leaders and others to exchange ideas in open-minded and frank conversations. Change is unlikely if communications occur in silos—for example, if the defense bar speaks only to its members. We believe the ABA and other bar associations are uniquely able to bring stakeholders in the criminal justice system together to participate in the dialogue that will be necessary to generate reform.

The conversations we need can take place at legal conferences, CLE panels, legislative hearings and town halls; at law firms, courthouses, police stations, schools, places of worship, community centers and universities; and in a host of other formal and informal settings. Online resources and social media can support such efforts. Different discussions may be required to address reform at the federal, state and local levels.

Awareness is the first step toward solving any problem. There will be no will to pursue reform, much less any sense of urgency, if there is no recognition that

pervasive and ongoing problems in the criminal justice system have caused communities of color to perceive that they are not treated fairly by police, prosecutors and judges. The President's Task Force report and the recent Justice Department reports that we found particularly instructive when completing our work could be used to inform the recommended dialogue, although there are many sources of relevant evidence, and we encourage lawyers to analyze and discuss any data or recommendations that might be useful for fostering broad agreement on necessary reforms. At the same time, while we encourage all lawyers to recognize that the treatment of minorities by law enforcement in many communities is too often unfair or unduly harsh, we also acknowledge that policing in high crime neighborhoods is challenging work, and that it is frequently done with great skill and professionalism.

Above in Section III.B, we outlined 12 areas in which best practices for improvements in policing specifically and the criminal justice system as a whole have been identified, based on recent government reports. Many of these proposals—for example, for police to receive better training on how and when they may use force—are not controversial, and should be implemented without delay. We realize that transforming broadly-written recommendations from federal reports into practical changes in day-to-day police procedures may prove challenging and may even provoke resistance. Yet, many municipalities have already begun implementing significant reforms based on the recommendations found in federal reports. These efforts should be studied and used as models for other jurisdictions as appropriate.

Finally, we are well aware that implementing certain proposed measures—such as equipping police officers with body cameras—may be costly. This is why we encourage federal and state elected officials to advocate for increased funding for police departments, public defenders' and prosecutors' offices, and courts. But additional financial resources should be allocated to implement specific recommendations, not simply provided with no strings attached.

**Recommendation 2. Build consensus about needed reforms and work to carry them out.**

There are open questions about which reforms are likely to be productive and whether certain proposals are too burdensome or costly. Even where there may be agreement that law enforcement practices should be modified, there are disputes about how such changes should be effected. For instance, the use of consent decrees in settlements between cities and the Justice Department has been criticized as ineffective and overly intrusive.<sup>90</sup> Others view these agreements as essential accountability mechanisms for local governments who are unable or unwilling to reform policing without federal intervention.<sup>91</sup> Because the ABA and other bar associations are viewed as honest brokers, they can build consensus and negotiate compromises, where appropriate.

As with Recommendation 1, to accomplish this effort, bar associations should bring together police officials, prosecutors, defense lawyers, elected officials and others to discuss how the administration of criminal justice can be improved. Further,

consensus can be developed and maintained if lawyers help to conduct rigorous retrospective analysis, asking questions such as: Did reforms adopted by law enforcement agencies achieve anticipated results? If not, why? What lessons can be learned that are applicable across jurisdictions?

**Recommendation 3. Educate the public about how the criminal justice system works.**

Basic principles of criminal law and procedure that are well-known to lawyers are often misunderstood by ordinary citizens. When incidents of alleged excessive use of force by police occur, such misunderstandings may unnecessarily inflame hostility toward law enforcement and contribute to outbreaks of violence. To defuse such conflicts before they arise, we recommend that the legal profession broaden its efforts to educate the public about important aspects of criminal justice, such as legal standards for self-defense, the functions of grand juries and the meaning of reasonable doubt, among others. As highlighted in a recent ABA newsletter, in recent years local bar associations have had success in sponsoring educational forums about the justice system for their communities, which in turn promotes respect for the rule of law and helps to manage community expectations when tragic events such as police-involved shootings occur.<sup>92</sup>

Local bar associations have also helped to reduce tensions after police-involved shootings threatened to trigger civil unrest. For example, following the death of Michael Brown, the Mound City Bar Association, a black bar association in St. Louis, helped quiet unrest in Ferguson by convening a “Solutions Summit” for representatives of the legal community, law enforcement officials and activists who were leading protests.<sup>93</sup> We recommend that lawyers commit additional time and resources to educating communities about the justice system and resolving clashes with law enforcement.

## CONCLUSION

We are grateful for the assistance of so many stakeholders in the criminal justice system who helped us to prepare this report. It is our sincere hope that our work spurs all members of the profession to redouble their efforts to ensure that the criminal justice system treats all Americans fairly and with dignity.

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<sup>1</sup> Barack Obama, President of the United States, Remarks by the President at Memorial Service for Fallen Dallas Police Officers (July 12, 2016), *available at* <https://www.whitehouse.gov/the-press-office/2016/07/12/remarks-president-memorial-service-fallen-dallas-police-officers>.

<sup>2</sup> James Comey, Director, FBI, Hard Truths: Law Enforcement and Race, Remarks at Georgetown University (Feb. 12, 2015), *available at* <https://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race>. Terry Cunningham, President of the International Association of Chiefs of Police, has also

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recognized the history of discrimination by law enforcement: “In the past, the laws adopted by our society have required police officers to perform many unpalatable tasks, such as ensuring legalized discrimination or even denying the basic rights of citizenship to many of our fellow Americans. While this is no longer the case, this dark side of our shared history has created a multigenerational—almost inherited—mistrust between many communities of color and their law enforcement agencies.” Chief Terence Cunningham, International Association of Chiefs of Police President, Statement on the Law Enforcement Profession and Historical Injustice (Oct. 17, 2016), *available at* [http://www.iacp.org/ViewResult?SearchID=2690\\_](http://www.iacp.org/ViewResult?SearchID=2690_)

<sup>3</sup> American Bar Association and NAACP Legal Defense Fund, Joint Statement on Bias in the Criminal Justice System, at 2 (July 2015), *available at*

[http://www.americanbar.org/content/dam/aba/images/abanews/aba-ldf\\_statement.pdf](http://www.americanbar.org/content/dam/aba/images/abanews/aba-ldf_statement.pdf).

<sup>4</sup> *Id.* at 1-7.

<sup>5</sup> UNITED STATES DEPARTMENT OF JUSTICE COMMUNITY ORIENTED POLICING SERVICES OFFICE, FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING 21 (2015), *available at* [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf) [hereinafter 21ST CENTURY POLICING TASK FORCE FINAL REPORT].

<sup>6</sup> Shaila Dewan & Richard A. Oppel Jr., *Efforts to Curb Police Abuses Have Mixed Record, and Uncertain Future*, N.Y. TIMES (Jan. 14, 2017), <https://www.nytimes.com/2017/01/14/us/chicago-police-consent-decree.html>.

<sup>7</sup> Black and Hispanic communities are not the only ones to have suffered as a result of discrimination in the criminal justice system, but we focus primarily on these communities in this report because the majority of available data relates to these populations. We believe, however, that collecting and analyzing additional information relating to policing and community relations (including additional polling data) would help to understand how other communities have been affected by the issues we analyze in this report.

<sup>8</sup> NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, THE KERNER REPORT (1968), *available at* <http://www.eisenhowerfoundation.org/docs/kerner.pdf>.

<sup>9</sup> Cydney Adams, *March 3, 1991: Rodney King Beating Caught on Video*, CBS NEWS (Mar. 3, 2016), <http://www.cbsnews.com/news/march-3rd-1991-rodney-king-lapd-beating-caught-on-video/>.

<sup>10</sup> *Id.*

<sup>11</sup> Monica Davey & Mitch Smith, *Justice Officials to Investigate Chicago Police Department After Laquan McDonald Case*, N.Y. TIMES (Dec. 6, 2015), <https://www.nytimes.com/2015/12/07/us/justice-dept-expected-to-investigate-chicago-police-after-laquan-mcdonald-case.html>; *see also* Nausheen Husain, *Laquan McDonald Timeline: The Shooting, the Video and the Fallout*, CHI. TRIB. (Jan. 13, 2013), <http://www.chicagotribune.com/news/laquanmcdonald/ct-graphics-laquan-mcdonald-officers-fired-timeline-htmlstory.html>.

<sup>12</sup> Jamie Kalven, *Sixteen Shots*, SLATE (Feb. 10, 2015), [http://www.slate.com/articles/news\\_and\\_politics/politics/2015/02/laquan\\_mcdonald\\_shooting\\_a\\_recently\\_obtained\\_autopsy\\_report\\_on\\_the\\_dead.html](http://www.slate.com/articles/news_and_politics/politics/2015/02/laquan_mcdonald_shooting_a_recently_obtained_autopsy_report_on_the_dead.html).

<sup>13</sup> Davey & Smith, *supra* note 11.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Husain, *supra* note 11.

<sup>18</sup> Richard Fausset et al., *Alton Sterling Shooting in Baton Rouge Prompts Justice Dept. Investigation*, N.Y. TIMES (July 6, 2016), <https://www.nytimes.com/2016/07/06/us/alton-sterling-baton-rouge-shooting.html>; *see also* Catherine E. Shoichet et al., *Alton Sterling Shooting: Second Video of Deadly Encounter Emerges*, CNN (July 6, 2016), <http://www.cnn.com/2016/07/06/us/baton-rouge-shooting-alton-sterling/index.html>.

<sup>19</sup> Shoichet et al., *supra* note 18.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *See id.*

<sup>25</sup> Christina Capocchi & Mitch Smith, *Officer Who Shot Philando Castile Is Charged With Manslaughter*, N.Y. TIMES (Nov. 16, 2016), <https://www.nytimes.com/2016/11/17/us/philando-castile-shooting-minnesota.html>; *see also* Eyder Peralta & Cheryl Corley, *The Driving Life and Death Of Philando Castile*,



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NPR (July 15, 2016), <http://www.npr.org/sections/thetwo-way/2016/07/15/485835272/the-driving-life-and-death-of-philando-castile>.

<sup>26</sup> Capecchi & Smith, *supra* note 25.

<sup>27</sup> *Id.*

<sup>28</sup> Emma Ockerman, *Read the Transcript of the Video Taken During Philando Castile Shooting in Minnesota*, TIME (July 7, 2016), <http://time.com/4397189/minnesota-shooting-philando-castiles-facebook-live-transcript/>.

<sup>29</sup> *Id.*

<sup>30</sup> Peralta & Corley, *supra* note 25.

<sup>31</sup> Capecchi & Smith, *supra* note 25.

<sup>32</sup> See e.g., David Caplan, *Thousands Protest Nationwide for the “Greater Good of Humanity” Following Police Shootings*, ABC NEWS (July 9, 2016), <http://abcnews.go.com/US/thousands-protest-nationwide-greater-good-humanity-police-shootings/story?id=40455394>.

<sup>33</sup> *Id.*

<sup>34</sup> See e.g., Josh Levs, *Ferguson Violence: Critics Rip Police Tactics, Use of Military Equipment*, CNN (Aug. 15, 2014), <http://www.cnn.com/2014/08/14/us/missouri-ferguson-police-tactics/>.

<sup>35</sup> Nick Gass, *12 Police Officers Injured During North Carolina Protests*, POLITICO (Sept. 21, 2016), <http://www.politico.com/story/2016/09/north-carolina-protests-keith-lamont-scott-228450>.

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