

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. JKB-17-99
v.	)	
	)	
POLICE DEPARTMENT OF BALTIMORE	)	
CITY, <i>et. al.</i>	)	
	)	
Defendants.	)	

**Written Comments of the NAACP Legal Defense and Educational Fund, Inc.  
on the Proposed Consent Decree between the U.S. Department of Justice and the Police  
Department of Baltimore City, *et al.***

Thank you for the opportunity to provide written comments on the above-captioned consent decree. Prior to approving the proposed settlement, the Court must determine whether it is “fair, adequate, and reasonable and is not illegal, the product of collusion, or against the public interest.” *United States v. North Carolina*, 180 F.3d 574, 581 (4th Cir. 1999). Given the long-standing police violence and misconduct in Baltimore, documented in the U.S. Department of Justice’s (DOJ) investigative report, a court-enforceable agreement is fair, warranted, and should be approved. We offer several recommendations for improving the proposed consent decree.

**I. Background**

As the nation’s oldest civil rights legal organization, NAACP Legal Defense and Educational Fund, Inc. (LDF) has utilized the U.S. Constitution and federal and state civil rights laws to pursue equality and justice for African Americans and other people of color in the areas of education, voting, employment and housing for almost eight decades. LDF has also fought to address racial bias at every stage of the criminal justice system – from police stops, to sentencing, to reentry.<sup>1</sup>

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<sup>1</sup> See, e.g., Complaint, *Davis, et al. v. City of New York, et al.*, Case No. 1:10-cv-00699-SAS-HBP (S.D.N.Y Jan. 28, 2010) (challenging the unlawful stopping, questioning and arresting of African-American and Latino public housing residents and their guests by New York City Police Department officers), <http://www.naacpldf.org/update/court-approves-final-settlement-federal-classaction-lawsuitchallenging-police-practices-nyc>. See also, *Buck v. Davis*, 580 U.S. \_\_\_\_ (2017)(holding that Duane Buck received ineffective assistance of counsel when his attorney introduced racially-biased testimony during his capital sentencing hearing), <http://www.naacpldf.org/press-release/naacp-legal->

Three years ago, following an unrelenting series of police-involved deaths of African-American men, women, and children,<sup>2</sup> LDF launched its Policing Reform Campaign, which seeks to promote unbiased and responsible policing policies and practices at the national, state, and local levels. In Baltimore, shortly after the police in-custody death of Freddie Gray, LDF and a coalition of clergy and civil rights organizations sent a letter to then President Barack Obama asking him to direct the U.S. Attorney General to open a civil rights investigation of the Baltimore Police Department (BPD).<sup>3</sup> We argued that city residents had endured years of police violence and misconduct costing the city \$5.7 million in settlements and court judgments from 2011 through 2014. The DOJ launched its probe of the BPD in May 2015, and over a year later, released a scathing report of its findings in August 2016. The report found that the BPD engaged in a pattern or practice of: conducting unconstitutional stops, searches, and arrests; using racially discriminatory policing strategies; using excessive force; and retaliating against persons who criticized police officers or were involved in lawful protests.<sup>4</sup>

To inform settlement negotiations between the DOJ and Baltimore City officials, in September 2016, LDF co-hosted a town hall meeting at the University of Maryland Francis King Carey School of Law for Baltimore residents and stakeholders to share with attorneys from the DOJ policing reforms they wanted to see in any consent decree between the DOJ and BPD.<sup>5</sup> This Court may view testimony provided at the meeting at <http://www.naacpldf.org/news/watch-baltimore-town-hall-policing-reforms>.

On January 12, 2017, the DOJ, BPD and the Mayor and City Council of Baltimore (the City) filed a 227-page consent decree in this Court.<sup>6</sup> The proposed consent decree details reforms to police policies and practices that are necessary to address the constitutional and statutory

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[defense-fund-wins-major-victory-united-states-supreme-court](#); and, *LDF Statement on President Obama's Actions to Promote Rehabilitation and Reintegration of Persons with Criminal Records* (Nov. 3, 2015), <http://www.naacpldf.org/press-release/ldf-statement-president-obama%E2%80%99s-actions-promote-rehabilitation-and-reintegration-perso>.

<sup>2</sup> Daniel Funke and Tina Sussman, *From Ferguson to Baton Rouge: Deaths of Black men and women at the hands of police*, Los Angeles Times, July 12, 2016, <http://www.latimes.com/nation/la-na-police-deaths-20160707-snap-htmlstory.html>.

<sup>3</sup> Letter from Rev. Dr. S. Todd Yearly, Maryland State Conference of the NAACP and Sherrilyn A. Ifill, President & Director Counsel, NAACP LDF to President Barack Obama, May 6, 2015, <http://www.naacpldf.org/document/clergy-letter-president-obama-regarding-death-freddie-gray>.

<sup>4</sup> See generally, U.S. Dep't of Justice Civil Rights Division, *Investigation of the Baltimore City Police Department*, Aug. 10, 2016, <https://www.justice.gov/opa/file/883366/download>, (hereinafter *Baltimore Investigative Report*)

<sup>5</sup> Jessica Anderson, *Rep. Elijah Cummings hosts town hall on Baltimore DOJ report*, The Baltimore Sun, Sept. 7, 2016, <http://www.baltimoresun.com/news/maryland/baltimore-city/doj-report/bs-md-ci-cummings-police-town-hall-20160907-story.html>.

<sup>6</sup> See, *U.S. v. Police Department of Baltimore, et al.*, Consent Decree, Case No. Case 1:17-cv-00099-JKB, (2017), <https://www.justice.gov/crt/page/file/925046/download>. (hereinafter *Baltimore Consent Decree*).

violations the DOJ uncovered in its investigative report. The violations allegedly committed by the BPD warrant a comprehensive, court-enforceable agreement that will remain in effect for numerous years to ensure sustainable reforms. Indeed, the recent federal criminal indictment of seven BPD officers for allegedly robbing Baltimore residents, fabricating court documents, and submitting fraudulent overtime claims underscores the urgent need for federal oversight of the BPD.<sup>7</sup>

Overall, the proposed consent decree contains many promising provisions that, if followed, will eliminate racially-discriminatory stops, arrests and searches and the use of excessive or lethal force by Baltimore police officers. Provisions in the consent decree also seek to improve the process for collecting and investigating misconduct and create a system for the timely investigation and fair discipline of officers who engage in misconduct. Nevertheless, we offer the following recommendations for improving the proposed consent decree.

## **II. Recommendations**

### **A. Selection and Role of the Independent Monitor**

The selection of a team of persons who will work with the Court to monitor the consent decree to ensure that all provisions are carried out fully will be essential to the success of the agreement. While the consent decree appropriately states that “it is important to allow for public input at each stage of the Independent Monitor (Monitor) selection process,” we respectfully urge the Court and the Parties to make the following additions to the agreement.

Members of any monitoring team should be diverse as it relates to race, ethnicity, gender, age, socio-economic status and expertise. Diversity would make it easier for members of the team to build trust with Baltimore residents and BPD officers and engage in a multi-disciplinary approach to understanding and addressing policing challenges in Baltimore.

Paragraph 444b of the proposed consent decree states that the DOJ and the City agree to a public comment period during which members of the public can review information submitted by Monitor applicants. We recommend that the comment period should last 30 days. This will allow community members sufficient time to review Monitor applications and present questions to applicants during interviews. These interviews should be accessible to the public, and at least one community member from each neighborhood that is directly impacted by the policing reforms outlined in the consent decree should participate in initial interviews of candidates.

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<sup>7</sup> Kevin Rector and Justin Fenton, *Federal Judge orders six officers indicted on racketeering charges to be held pending trial*, The Baltimore Sun, Mar. 2, 2017, <http://www.baltimoresun.com/news/maryland/crime/bs-md-ci-bail-hearings-bpd-20170302-story.html>.

Paragraph 444d requires the DOJ and the City to provide an opportunity for monitor finalists to respond to questions and concerns of the Baltimore community during a public meeting. There should be at least four public meetings with final candidates held at locations around the city that are accessible to public transportation. Holding the meetings in various locations around the city would ensure that community members in different neighborhoods in Baltimore question finalists in person. The Monitor must have the trust and confidence of Baltimore residents to effectively oversee the implementation of the consent decree, and having multiple opportunities of community engagement during the selection process will help ensure the Monitor is well-suited to oversee the implementation of the consent decree.

Paragraph 446 of the proposed consent decree requires an evaluation of the Monitor, including whether the Monitor is “adequately engaging the community.” The DOJ, the City, and the Court should develop a process by which members of the public may submit comments regarding the adequacy of the Monitor’s community engagement activities. This would maintain community involvement and participation in the consent decree process and ensure that the Monitor team is adhering to its community engagement responsibilities stipulated in the consent decree.

Paragraph 462 requires the Monitor to submit a monitoring plan to the DOJ and the City for review and approval. Members of the public should be permitted to comment on the plan prior to approval by the Parties and the Court during a 30-day comment period.

Additionally, community stakeholders should be able to review semi-annual monitor reports submitted to the Court and offer supplemental reports if they believe the reports fail to include issues of public concern. This would provide the Court and the Parties with a more comprehensive view of the status of the consent decree implementation. Status conferences with the Court concerning the monitoring of the consent decree should be done in open court. The Court should endeavor to hear from community stakeholders and members from the neighborhoods most impacted by the reforms detailed in the consent decree.

The Request for Application, which will be used by the Parties to solicit applications from potential monitors, should give priority consideration to applicants who commit to hiring individuals or community-based organizations (CBO) to serve as a liaison between the Monitor and Baltimore residents and/or assist with the collection of qualitative data, such as through annual community surveys, as required by paragraph 23 of the consent decree. Community members and CBOs are best positioned to assist the Monitor with engaging the community.

## **B. Civilian Oversight Task Force**

The proposed consent decree requires the DOJ and the City to create a 5-member Community Oversight Task Force (COTF) that would make recommendations for improving the current system of civilian oversight of police, including review of the Civilian Review Board (CRB). The CRB is an independent agency through which members of the public can file a complaint against police officers alleging the use of force, abusive language, harassment, false arrests and false imprisonment.<sup>8</sup> Since its inception, the CRB has struggled with completely filling vacancies,<sup>9</sup> and a *Baltimore Sun* investigation found that from January 2013 through March 2016, only 4 percent of excessive force complaints were upheld.<sup>10</sup> Consequently, Baltimore residents believe that the CRB is useless.<sup>11</sup>

The proposed consent decree states that COTF members will be appointed by the Mayor; however, we recommend that the Parties and the Court consider a more inclusive selection process for the COTF members. For example, the City could develop a process by which the Mayor would receive nominations from Baltimore residents, publicize a list of nominees, and publicly announce her final selection. The DOJ and the City of Portland included such a nominations process for a Community Advisory Board in their proposed settlement agreement.<sup>12</sup>

## **C. Community Policing and Engagement**

The violations of constitutional and federal laws that are detailed in the DOJ's investigative report of the BPD expose a police department that many would argue is beyond repair. Any police commissioner and command staff tasked with addressing these violations could benefit from the expertise of similarly-situated police chiefs and commanders. Accordingly, the City and BPD should create an advisory team for the current and successor Baltimore Police Commissioner comprising law enforcement officials, academics and activists experienced in transforming a police department and creating a police culture that respects the rule of law and diverse communities. Advisory team members should be selected by the Baltimore Police Commissioner,

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<sup>8</sup> See, Subtitle 16 of Article 1 of the Code of Local Laws of Baltimore City § 16-43(a).

<sup>9</sup> See, Karen Houppert, *The Civilian Review Board ups its game*, The City Paper, May 11, 2016 <http://www.citypaper.com/news/mobtownbeat/bcp-051116-mob-civilian-review-board-20160511-story.html>.

<sup>10</sup> See, Catherine Rentz, *Baltimore police failed to share misconduct complaints with civilian oversight board; promise to do so now*, The Baltimore Sun, Aug. 31, 2016 <http://www.baltimoresun.com/news/maryland/baltimorecity/bs-md-civilian-review-board-20160831-story.html>.

<sup>11</sup> See, Justin Fenton, *Baltimore police review board called irrelevant, ineffective*, The Baltimore Sun, Jun. 2, 2013 [http://articles.baltimoresun.com/2013-06-02/news/bs-md-ci-police-civilian-review-board-20130602\\_1\\_civilianpanel-police-misconduct-baltimore-sun](http://articles.baltimoresun.com/2013-06-02/news/bs-md-ci-police-civilian-review-board-20130602_1_civilianpanel-police-misconduct-baltimore-sun).

<sup>12</sup> See, Proposed Settlement Agreement, *U.S. v. City of Portland*, Case No. 3:12-cv-02265-SI, ¶ 145 (D. OR. Dec. 17, 2012), [https://www.justice.gov/sites/default/files/crt/legacy/2013/11/13/ppb\\_proposedsettle\\_12-17-12.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2013/11/13/ppb_proposedsettle_12-17-12.pdf).

the Mayor, deans of leading academic institutions in the City, City Council Members, and residents of Baltimore City.

#### **D. Stops, Searches, Arrests, and Voluntary Police-Community Interactions**

The way police officers engage civilians during stops, searches and arrests directly impacts police-community relations.<sup>13</sup> Paragraph 34 of the consent decree allows officers to conduct field interviews of community members to collect information about criminal activity. Officers conducting field interviews must introduce themselves and refrain from using language or actions that suggests that residents are not free to leave.

During these encounters, officers should be required to provide civilians with a business card that includes the officer's name and rank. President Obama's Task Force on 21<sup>st</sup> Century Policing also recommended law enforcement officers to carry business cards because it allows members of the public to offer suggestions or commendation or to file complaints with the appropriate individual, office, or board.<sup>14</sup>

Paragraph 42 states that BPD is required to create a system for providing persons who are stopped with a record of the citizen-police contact, such as a carbon copy of a receipt. The Parties should include in the receipt the race, ethnicity, gender, and age of the persons stopped and the race of the officer.

The record of the stop must include the basis for the stop. Under the consent decree it would be sufficient to say an officer stopped someone "suspected of criminal activity" or "traffic offense." But because paragraph 43 prohibits officers from conducting pretext stops for loitering and misdemeanors, a specific reason for the stop should be included in the citizen-police contact receipt.

Paragraph 82 of the proposed consent decree requires BPD supervisors to collect and analyze stop, search, and arrest data of officers to improve training and determine the effectiveness of these practices. Because BPD needs to build trust with the community they should also publicly report these data and analyses annually. Making this information public for community use would allow Baltimore residents and stakeholders to use these data to monitor police activities.

#### **E. Impartial Policing**

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<sup>13</sup> See, President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, Washington, DC: Office of Community Oriented Policing Services, May 2015 at 24, available at [http://www.cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf). (hereinafter *President's Policing Task Force Final Report*).

<sup>14</sup> *Id.* at 27.

The DOJ investigative report stated that BPD officers' mistreatment and improper searches of transgender individuals reflected underlying unlawful gender bias.<sup>15</sup> Paragraph 89 of the proposed consent decree requires BPD officers to "address and in documentation refer to all members of the public, including LGBT individuals, using the names, pronouns, and titles of respect appropriate to the individual's gender identity as expressed or clarified by the individual." Paragraph 53 states that "LGBT individuals' preferences with respect to the gender of the officer conducting the search will be honored." Because BPD has had a history of mistreating this population and not respecting the way transgender and gender non-conforming individuals identify themselves, BPD should mandate its officers to inform these individuals that they may indicate a gender preference regarding their self-identification and that their preference for the gender of the officer conducting a search will be followed. By mandating these actions, officers will be encouraged to respond to transgender individuals with compassion, dignity, and respect.

#### **F. Use of Force**

In the wake of highly-publicized police shootings of unarmed civilians, law enforcement leaders have agreed that police departments should hold themselves to a higher standard than what the law allows in use-of-force incidents; and, the preservation of life should be the goal in police-civilian encounters.<sup>16</sup> Instead of exercising these principles, the DOJ investigative report found that BPD officers escalated encounters and used force when it was not necessary to resolve an incident, and used excessive force against individuals with disabilities and youth.<sup>17</sup>

The proposed consent decree should include a provision requiring BPD officers who use deadly force to submit to a drug test immediately after the incident. Currently, the Memorandum of Understanding (MOU) between the BPD and the local Fraternal Order of Police allows officers who use deadly force to be drug tested when there is reason to believe that the officer was under the influence of drugs or alcohol.<sup>18</sup> Additionally, a drug-test policy was implemented by the St. Louis County Police Department after tests revealed that an off-duty officer, who wrecked a police vehicle and was involved in a controversial shooting, was drunk and had cocaine in his system.<sup>19</sup>

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<sup>15</sup> *Baltimore Investigative Report*, *supra* note 4 at 123.

<sup>16</sup> See generally, Police Executive Research Forum, Critical Issues in Policing Series: Guiding Principles on Use of Force, March 2016, available at <http://www.policeforum.org/assets/30%20guiding%20principles.pdf>.

<sup>17</sup> See, *Baltimore Investigative Report*, *supra* note 4, at 75-76.

<sup>18</sup> See, City of Baltimore, *Memorandum of Understanding between The Baltimore City Police Department and the Baltimore City Lodge No. 3, Fraternal Order of Police, Inc., Unit I Police Officers, Police Agents and Flight Officers*, Fiscal Years 2014-2016, Appendix E, at 62.

<sup>19</sup> Christine Byers, *St. Louis Police to undergo drug and alcohol testing after shootings, wrecks*, St. Louis Post Dispatch, Jan. 30, 2016, [http://www.stltoday.com/news/local/crime-and-courts/st-louis-police-to-undergo-drugand-alcohol-testing-after/article\\_f75d2997-6632-5270-8705-f94092b181c9.html](http://www.stltoday.com/news/local/crime-and-courts/st-louis-police-to-undergo-drugand-alcohol-testing-after/article_f75d2997-6632-5270-8705-f94092b181c9.html).

Paragraph 217 of the proposed consent decree requires BPD to analyze the previous year's force data on an annual basis "to determine trends; identify and correct deficiencies revealed by this analysis; and document its findings in a public report." BPD should be required to publicly report on its website data collection and analysis of use-of-force incidents disaggregated by demographic information of the victims on a quarterly basis. Making this information public would allow community members to identify discriminatory policing practices and excessive use of force by BPD officers.

#### **G. Response to Sexual Assault**

The DOJ's investigative report found that BPD systematically under-investigated reports of sexual assault, and did not collect data regarding sexual assault involving BPD officers.<sup>20</sup> Any final consent decree must require BPD to develop policies and practices aimed at documenting and addressing sexual harassment and assault of victims by BPD officers. This includes putting systems in place to collect data on the victim and suspect populations, the incidence and nature of cases of sexual assault reported to and handled by BPD, and the incidence of cases of sexual assault involving BPD officers.<sup>21</sup>

#### **H. Technology**

Public safety is maintained and reinforced in communities when residents and the police who serve them work together to develop and carry out problem-solving policing strategies to prevent and fight crime. Paragraph 276 requires BPD to disclose to the public on its website or disclose to any civilian oversight entity agreed upon by the Parties: (1) the type of new equipment or technology sought; and (2) BPD's intended use of the equipment. BPD should be required to provide opportunities for community input on the use of new equipment and technology sought by BPD. BPD should also discontinue the use of current equipment and technology not subjected to community feedback, such as its aerial mass surveillance system, until public feedback is provided.

#### **I. Supervision**

The DOJ's investigative report found that the BPD "relies on deficient accountability systems that fail to curb unconstitutional policing."<sup>22</sup> That finding was echoed during our town hall, in which family members of persons killed by Baltimore police officers lamented that the

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<sup>20</sup> See, *Baltimore Investigative Report*, *supra* note 4, at 123.

<sup>21</sup> *Id.* at 127.

<sup>22</sup> *Id.* at 139.



officers involved in these incidents were neither criminally charged nor disciplined, even though some officers had other complaints of excessive use of force pending against them.<sup>23</sup>

Paragraph 317 requires BPD's early intervention system (EIS) relational database to "capture all information necessary to ensure supervisory awareness and early identification of potentially problematic individual and department-wide conduct or signs of stress or other behavior that would benefit from being addressed." This information should be disaggregated by race, ethnicity, national origin, gender, age, physical and mental disability, and civilian's zip code. This will provide adequate information to supervisors to discern bias-based policing by BPD officers, and to determine the proper response, whether it be corrective training or imposition of disciplinary measures. accountable.

#### **J. Coordination with Baltimore City School Police Force**

Paragraph 417 requires BPD to conduct an initial assessment of how it uses the Baltimore City School Police Force (BSPF) as supportive law enforcement officers and determine areas of improvement. The initial assessment should begin 90 days after the approval of the consent decree. To the extent that the BPD continues to contract with BSPF, then any memorandum of understanding must require BSPF to follow the same policies, training and data collection and reporting as BPD officers under the final consent decree between DOJ and Baltimore City.

#### **K. Recruitment, Hiring, and Retention**

BPD has faced challenges in recruiting qualified officers – meeting only a fraction of its goals for the 2016 police academy class.<sup>24</sup> The DOJ investigative report found that as of 2015, the BPD was successful in recruiting African-American officers who comprised 42% of sworn officers, and 20% women; but, 75% lived outside of Baltimore City.<sup>25</sup> BPD should be required to adopt residency incentives to motivate more Baltimore residents to serve as members of the police force, and attract more officers to live in the city. Community-police relations could be strengthened if officers are in regular and direct contact with the community members they serve.

Paragraph 424 of the proposed consent decree requires BPD to include certain factors in its background investigations for hiring officers. BPD should be required to change restrictions on

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<sup>23</sup> See, *UMB-NAACP Legal Defense Fund Town Hall on Policing Reform in Baltimore*, Sept. 7, 2016, <http://www.naacpldf.org/news/watch-baltimore-town-hall-policing-reforms>.

<sup>24</sup> *Id.* at 137.

<sup>25</sup> *Id.* at 16.

past marijuana use in police hiring. BPD Commissioner Kevin Davis acknowledged that marijuana use is the primary reason why Baltimore residents are disqualified from police service.<sup>26</sup>

Paragraph 421b requires BPD's Recruitment Plan to include "[r]ecruitment outreach to a broad spectrum of community stakeholders, aimed at increasing the diversity of its ranks, including race and gender . . . ." BPD should be required to make specific efforts to increase gender diversity on the force by engaging in special outreach and recruitment for women.<sup>27</sup>

Additionally, BPD officials responsible for recruitment, retention, and staffing should be screened regularly to identify any implicit biases in their hiring decisions.

#### **L. Termination of the Consent Decree**

Paragraph 505 states that the proposed consent decree may be terminated five years after the effective date of the agreement. The consent decree should be in effect for no less than 10 years given the widespread police misconduct detailed in the DOJ's investigative report. Termination of Baltimore's consent decree in no less than 10 consecutive years assures sufficient time to determine if the BPD is in full and effective compliance.

#### **M. Conclusion**

The DOJ's investigative report uncovered police violence and misconduct that Baltimore residents have endured for decades. The terms of any final consent decree between the DOJ and City officials must hold the promise of transforming the BPD into an agency of sworn officers and civilians who seek to serve and protect communities, with a guardian—not warrior—mindset, without regard to race, ethnicity, gender, age, and socio-economic status, and consistent with the U.S. Constitution, state and federal laws, and departmental policies. We appreciate the opportunity to comment on the proposed consent decree, and look forward to a continued partnership with the Court and the Parties following the approval of this very important agreement.

Respectfully submitted,



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<sup>26</sup> See, e.g., Kevin Rector, *Davis wants to relax restrictions on past marijuana use for police recruits in Maryland*, The Baltimore Sun, July 22, 2016, <http://www.baltimoresun.com/news/maryland/crime/bs-md-ci-police-marijuana-standard-20160721-story.html>.

<sup>27</sup> *President's Policing Task Force Final Report*, *supra* note 13, at 2.