



**Supplemental Statement by the
NAACP Legal Defense and Educational Fund, Inc.
To the President's Task Force on 21st Century
Policing**

February 17, 2015

**Sherrilyn A. Ifill, President and Director Counsel
NAACP Legal Defense and Educational Fund, Inc.
40 Rector Street, 5th fl.
New York, New York 10006
212-965-2200
www.naacpldf.org**

Introduction

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), I offer this supplemental statement to the President's Task Force on 21st Century Policing ("Task Force") in the hopes that it will inform the Task Force's recommendations to the President regarding strategies to foster trust, collaborative relationships, and mutual respect between local law enforcement and the communities they protect and serve, while also promoting effective crime reduction. LDF is the nation's oldest civil rights legal organization. Since its founding by Thurgood Marshall in 1940, LDF has relied on the Constitution, as well as federal and state civil rights laws, to pursue equality and justice for African Americans and other people of color. Given LDF's institutional mission and continuous engagement in litigation and policy advocacy designed to eliminate the pernicious influence of racial bias in all stages of America's criminal justice system, the longstanding problem of police abuse and excessive force in communities of color is of utmost importance to LDF.

At the invitation of the Task Force, LDF offered oral and written statements at the January 13, 2015 Listening Session centered on "Building Trust and Legitimacy." Those statements detailed recommendations that sought to eliminate police violence in communities of color through police officer accountability, police officer training, and transparency in law enforcement. Additionally, LDF previously called upon the Department of Justice (DOJ) to address the unjustified use of lethal and excessive force by law enforcement against African Americans,¹ and worked in partnership with other national civil and human rights organizations to seek comprehensive policing reforms.²

LDF remains engaged in efforts to implement its prior calls for policing reforms and is hopeful that previously offered proposals will aid the Task Force in crafting recommendations to the President. The instant submission supplements LDF's earlier statements by briefly addressing the ways in which federal government resources can be deployed to advance policing reforms relating to accountability, data collection, demilitarization of police in schools, and training on bias-free policing.

At the outset, LDF recognizes the jurisdictional challenges associated with federal efforts to reform law enforcement practices that traditionally fall within the purview of state and local authorities. But, federal financial support for state and local police departments through various federal grant programs, such as the Edward Byrne Memorial Justice Assistance Grant (JAG) Program, and federal statutes prohibiting race discrimination in policing, such as Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968, could serve as substantial and effective vehicles for oversight.

In particular, Title VI and the Safe Streets Act require the DOJ to ensure that federally funded programs are administered free of discrimination.³ Thus, the DOJ must properly assess and ultimately ensure that law enforcement recipients of federal funding have taken affirmative steps to eliminate bias in policing practices.⁴ Moreover, federal funding—and the process used to distribute funding—can be used as a mechanism to encourage or discourage certain police practices or behaviors in the following ways:

1. Accountability in Policing through Adequately-Funded Special Prosecutor Offices

The incidents of lethal and excessive force exercised by police against African Americans are the focus of significant concern in communities nationwide. The apparent lack of accountability for police misconduct, abuse, and the use of unjustified lethal force is particularly troubling. In far too many instances, the law seems inadequate to protect those abused by the police. And the failure to hold officers accountable for their misconduct fosters the perception that they are able to engage in such behavior with impunity. This behavior deepens the gulf of mistrust that exists between police and those that they are required to protect and serve.

As LDF and others who offered testimony before the Task Force explained, new models of police accountability are necessary to meet the challenges presented by police violence and misconduct. Prosecutorial and investigatory authorities must be independent of the law enforcement agencies they are charged with monitoring, so that they are not beholden to local or parochial interests that undermine efforts to ensure accountability.

With this in mind, LDF recommends that the DOJ create and adequately fund and monitor special prosecutor offices or prosecutorial units focused solely on incidents of police misconduct and excessive or lethal use of force. Several states, such as New York, Connecticut, and Wisconsin, have laws that call for the appointment of special prosecutors or independent investigators in officer-involved death cases.⁵ Federal funding could serve as an incentive to support and expand these efforts nationwide.

2. Mandatory Use of Force Data Collection for Law Enforcement Recipients of Federal Funds

As detailed in LDF's previous testimony before the Task Force, unreliable, piecemeal data collection on police-citizen encounters and police-involved use of force incidents wholly undermine efforts to hold police accountable for their conduct and obscures the character and scope of the concerns raised by problematic police-citizen encounters.⁶ Indeed, Attorney General Eric Holder recently lamented the

lack of reliable data when he remarked that “[t]he troubling reality is that we lack the ability right now to comprehensively track the number of incidents of *either* uses of force directed at police officers *or* uses of force by police. This strikes many – including me – as unacceptable. Fixing this is an idea that we should all be able to unite behind.”⁷

To this end, Congress recently passed and President Obama signed the Death in Custody Reporting Act of 2013, which requires law enforcement agencies that receive federal funding to report to the U.S. Attorney General, on a quarterly basis, in-custody deaths of persons who were arrested, detained or incarcerated. The Attorney General must study these data and report on ways to reduce the number of such deaths.⁸

While this is an important first step, the DOJ should also require law enforcement recipients of federal funds, particularly funding used to hire new police officers, to collect and report data regarding police use-of-force incidents, including lethal force, disaggregated by the race, ethnicity, and sex of the civilian and location of the incident. Title VI, the Safe Streets Act, and the federal funding discussed above offer federal authorities, including the DOJ, sufficient opportunity to require that police departments provide the kind of statistical information and other data to ensure compliance with Title VI of the Civil Rights Act of 1964 and the guidelines of federal grant programs.

3. Demilitarization of Police in Schools

Without question, the jarring images of the military-style response by local police to the public protests in Ferguson shocked the nation. Law enforcement officers suddenly appeared in military fatigues and full-body armor and rode in armored trucks through peacefully gathered crowds. LDF has appealed to Congress to limit, and in many cases end, federal programs that equip state and local law enforcement agencies with military-style weapons, vehicles and aircraft.⁹

LDF is particularly troubled by reports of the U.S. Department of Defense’s transfer and/or lending of military weapons for use at K-12 public schools through its 1033 Excess Property Program (“1033 Program”). A number of school districts have participated in the 1033 program,¹⁰ and received military equipment. For example, the Granite School District in Utah reportedly received M-16s through the 1033 program.¹¹

As a fundamental matter, militarization of our educational institutions negatively impacts the educational environment for all students. However, the greatest potential impact is on students of color. These students are already disproportionately impacted by the criminalization of student conduct. For example, while African-American students make up 16 percent of student

enrollment nationally, they comprise 27 percent of students referred to law enforcement and 31 percent of students arrested, often for minor “discretionary” offenses, like “disrespect.”¹² Increasingly, African American girls are disproportionately impacted by out-of-school suspensions for minor behavior.¹³

A significant contributor to the “School to Prison Pipeline” is the presence of law enforcement officers on school grounds, often known as “School Resource Officers.” These officers are extensively involved in school discipline and often arrest, ticket, or cite students or refer them to the juvenile justice system for routine infractions. Research shows that police presence in schools negatively impacts school climate, fueling distrust and anxiety among students, despite doing little to improve safety.¹⁴ Adding military weaponry will only exacerbate tenuous climates and further intimidate and alienate students. Some of the school districts reportedly participating in the 1033 program, including those in California, Florida, Georgia, Kansas, Michigan, Nevada, and Texas, have documented histories of discipline disparities involving students of color.¹⁵

The transfer of military-style equipment to schools is especially alarming given that school law enforcement personnel are routinely used to handle minor disciplinary matters. Those personnel are often not trained to handle such incidents, and the combination of possible implicit bias and unchecked discretion result in high suspension and expulsion rates among youth of color, even though they do not misbehave more frequently than their white peers.

This country cannot afford to conflate school safety with school discipline or understate the harmful consequences of militarizing school police. The use of *any* form of military equipment on school campuses is certainly well beyond the scope of federal programs designed to equip law enforcement with weaponry. And, exacerbating overly punitive discipline practices and hostile school climates by arming school police officers with military-grade weapons poses significant danger to those students most vulnerable to overly punitive discipline. LDF urges the Task Force to recommend that the DOJ use its consultative authority under the 1033 Program¹⁶ to end the transfer of surplus military weapons, vehicles and aircraft to law enforcement in K-12 public schools.

4. Training on Bias-Free Policing and De-escalation to Improve Police-Community Relations

A week ago, Federal Bureau of Investigation Director James Comey courageously acknowledged what most communities of color have known for decades – in American history, police “enforced the status quo, a status quo that was often brutally unfair to disfavored groups.”¹⁷ He added that “[m]any people in our white-majority culture have unconscious racial biases and react differently to a white face

than a black face. In fact, we all, white and black, carry various biases around with us.”¹⁸

All agree that improving the relationships between law enforcement and communities is absolutely critical. Improving those relationships requires ensuring that police officers are appropriately and properly trained. As described in LDF’s previous testimony and by a number of Task Force witnesses, training must focus squarely on explicit and implicit racial bias,¹⁹ the use of force, de-escalation techniques, and the appropriate engagement with youth and those who exhibit mental health concerns. Trainings, or any remedial measures designed to improve police practices, must also be informed by the lived experiences of police officers. Ideally, community members could also provide input and guidance on the concerns that shape police officer training. At a minimum, officers must: be taught to acknowledge and confront attitudes and biases that shape their behavior; be given clear guidance on the appropriate use of force; and be trained to de-escalate encounters and engage in respectful policing. Training of this sort is done to effectuate a change in the culture of policing, which will in turn help to bridge the gulf of mistrust at the root of tragic police-citizen encounters.

The enforcement tools of Title VI and the Safe Streets Act and incentives inherent to federal funding should be deployed to make certain that police departments are undertaking these types of training efforts, and that they are effective. In particular, police departments that receive federal funding from entities such as the Community Oriented Policing Services program should be required to undergo Fair and Impartial Policing Training and similar training programs that will improve the provision of police services to diverse communities. Doing so will undoubtedly ease the tensions that so often define relationships between communities and police.

Finally, improving the character of police-community relations means fully confronting the scope and function of policing. Law enforcement policies, such as so-called “broken windows” policing that incentivizes arrests and broadens the role of police beyond protecting the health, safety, and welfare of community members, exacerbate mistrust, criminalize communities, and drive the types of incidents that led to Michael Brown and Eric Garner’s deaths. Eliminating the perverse incentives that reward arrests will help improve police-community relations.

Conclusion

The problems the Task Force must confront are complex but not insurmountable. LDF hopes that the recommendations offered here, as well as in its previously submitted written and oral statements, prove useful as the Task Force considers the submissions it has received to date. LDF looks forward to reviewing the Task Force’s final report to the President and thank you for your consideration.

Endnotes

¹ LDF has asked DOJ to: (1) undertake a comprehensive and thorough review of police-involved assaults and killings; (2) provide strong financial incentives for racial bias training and avoiding the use of force; (3) hold police officers and departments accountable to the full extent of federal criminal and civil rights statutes; and (4) encourage the use of police officer body-worn cameras. *See*, Letter from Sherrilyn Ifill to Att’y Gen. Eric Holder Re: Use of Excessive Force by Police, (Aug. 14, 2014), http://www.naacpldf.org/files/case_issue/8-14-2014%20Letter%20to%20AG%20Holder%20re%20use%20of%20excessive%20force%20by%20police.pdf.

² Among the reforms called for were: review and reporting of racial profiling practices; review and reporting of stop and frisk, search, and arrest practices; updating the 2003 DOJ Guidance Regarding the Use of Race by Federal Law Enforcement Agencies; elimination of “broken windows” policing, which encourages aggressive responses to minor offenses; and the promotion of community-based policing. *A Unified Statement of Action to Promote Reform and Stop Police Abuse*, NAACP Legal Defense & Educational Fund, Inc., (Aug. 18, 2014), www.naacpldf.org/files/case_issue/Black%20Leaders%20Joint%20Statement%20-%20208-18_0.pdf.

³ *See*, Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d - 2000d-7, states that “[n]o person in the United States shall, on the ground of race, color, or national origin, be . . . subjected to discrimination under any program . . . receiving Federal financial assistance.” Accordingly, 28 C.F.R. § 42.105-09 places an affirmative obligation on DOJ to ensure that recipients of federal funding are not engaged in discrimination and to conduct periodic reviews to ensure compliance with Title VI antidiscrimination mandate. A failure to comply with these provisions may result in the suspension or termination of federal funding. *Id.* at § 42.108.

See also, Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §3789d(c)(1) (2015), which states “no person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this chapter.” Failure to comply could result in the suspension or termination of grant funds. §3789(d)(c)(2).

⁴ Pursuant to 28 C.F.R § 42.101, no program or activity receiving financial assistance from the DOJ may engage in racial discrimination. It follows, therefore, that law enforcement agencies receiving federal funds through the JAG program may not subject any person to discrimination based on race, color, or national origin.

⁵ *See*, Eric T. Schneiderman, Attorney General of New York State, *A.G. Schneiderman Requests Executive Order to Restore Public Confidence in Criminal Justice System*, December 8, 2014 (asking New York Governor Andrew Cuomo to use his executive power under N.Y. Exec. Law § 63.2 to authorize the Attorney General to investigate and prosecute police-involved deaths), <http://www.ag.ny.gov/press-release/ag-schneiderman-requests-executive-order-restore-public-confidence-criminal-justice>; *See, also*, Conn. Gen. Stat. §51-277a (2015)(requiring the Division of Criminal Justice to investigate officer-involved deaths and allowing the Chief State’s Attorney to appoint a special assistant state’s attorney to investigate such cases); Yamiche Aleindor, *Wis. Bill mandates rules for officer-involved deaths*, USA Today, April 30, 2014 (discussing the passage of Assembly Bill 409 (now Wis. Stat. Ann. §175.47), which requires law enforcement agencies to develop a policy mandating the investigation of police-involved shootings by at least two independent investigators).

⁶ See Wesley Lowery, *How many police shootings a year? No one knows*, The Washington Post, Sept. 8, 2014, <http://www.washingtonpost.com/news/post-nation/wp/2014/09/08/how-many-police-shootings-a-year-no-one-knows/>; Naomi Shavin, *Our Government Has No Idea How Often Police Get Violent With Civilians*, New Republic, Aug. 25, 2014, <http://www.newrepublic.com/article/119192/police-use-force-stats-us-are-incomplete-and-unreliable>; Radley Balko, *Why Are There No Good Data On Police Use of Force?*, Huffington Post, Feb. 10 2013, http://www.huffingtonpost.com/radley-balko/why-is-there-no-good-data_b_2278013.html.

⁷ Press Release, United States Department of Justice, *Attorney General Holder Urges Improved Data Reporting on Both Shootings of Police Officers and Use of Force by the Police*, Jan. 15, 2015, available at <http://www.justice.gov/opa/pr/attorney-general-holder-urges-improved-data-reporting-both-shootings-police-officers-and-use>. See also, James Comey, Director, Federal Bureau of Investigation, Remarks Delivered to Georgetown University about the Hard Truths of Law Enforcement and Race, Feb. 12, 2015, (stating that “[d]emographic data regarding officer-involved shootings is not consistently reported...Because reporting is voluntary, our data is incomplete and therefore, in the aggregate, unreliable.”) available at <http://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race>.

⁸ See, Public Law No. 113-242 (2014); See also, Hunter Schwarz, *Congress decides to get serious about tracking police shootings*, Washington Post, December 11, 2014, available at <http://www.washingtonpost.com/blogs/post-politics/wp/2014/12/11/congress-decides-to-get-serious-about-tracking-police-shootings/>.

⁹ See *Oversight of Federal Programs for Equipping State and Local Law Enforcement Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 113th Cong. 1-9 (2014) (statement of the NAACP Legal Defense & Educational Fund, Inc.), available at <http://www.naacpldf.org/press-release/ldf-urges-senate-committee-curb-militarization-state-and-local-police-and-impose-struct>; Testimony by the NAACP Legal Defense and Educational Fund, Inc. Before the United States Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights, Hearing on the State of Civil and Human Rights in the United States, Dec. 9, 2014, available at <http://www.naacpldf.org/press-release/ldf-urges-senate-committee-curb-militarization-state-and-local-police-and-impose-struct>.

¹⁰ Districts and states reported to have received equipment through the 1033 Program include: California (Baldwin Park; Oakland Unified; Los Angeles; Stockton Unified); Florida (Washington; Bay District; Palm Beach County); Georgia (Fulton County; Dooly County); Kansas (Auburn); Michigan (Detroit; Schoolcraft); Nevada (Washoe); Texas (Ector; Ennis; Spring Branch); Texas (Frenship; Aledo; Edinburg; San Antonio; Trinity; Beaumont); and Utah (Granite). For a list of all agencies participating in the 1033 program, see Arezou Rezvani, Jessica Pupovac, David Eads and Tyler Fisher, *MRAPs and Bayonets: What We Know About the Pentagon's 1033 Program, List of Agencies Receiving Equipment*, National Public Radio, Sept. 2, 2014, available at <http://www.npr.org/2014/09/02/342494225/mraps-and-bayonets-what-we-know-about-the-pentagons-1033-program>.

¹¹ Rick Egan, *Granite district using military M-16s to defend schools*, The Salt Lake Tribune, Feb. 20, 2014 available at <http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/gallery.csp?cid=1363928&pid=1629629>.

¹² U.S. Department of Education-Office for Civil Rights, *Data Snapshot: School Discipline*, March 21, 2014, available at <http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>.

¹³ For example, in Ohio, African American girls received 16.3 out-of-school suspensions per 100 African American girls enrolled for disobedience, while white girls received 1.5 out of school suspensions per 100 white females enrolled for the same infraction. See, NAACP Legal Defense and Educational Fund and National Women’s Law Center, *Unlocking Opportunity for African American Girls*, 16-17 (2014), available at http://www.naacpldf.org/files/publications/Unlocking%20Opportunity%20for%20African%20American%20Girls_0.pdf.

¹⁴ *Police in Schools Are Not the Answer to the Newtown Shooting*, Joint Issue Brief, Jan. 2013, available at <http://www.naacpldf.org/publication/police-schools-are-not-answer-newtown-shooting>.

¹⁵ See, Office for Civil Rights Data, *supra* note 12. See also, NAACP Legal Defense and Educational Fund, Inc. *et al*, *Arresting Development: Addressing the School Discipline Crisis in Florida* (2006) available at http://b3cdn.net/advancement/e36d17097615e7c612_bbm6vub0w.pdf.

¹⁶ See, 10 U.S.C. § 2567a(a)(2) (states that the Secretary of the Department of Defense may transfer excess property to law enforcement agencies in consultation with the Attorney General).

¹⁷ James Comey, Director, Federal Bureau of Investigation, Remarks Delivered to Georgetown University about the Hard Truths of Law Enforcement and Race, Feb. 12, 2015, available at <http://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race>.

¹⁸ *Id.*

¹⁹ Implicit bias is defined as “the mental process that causes us to have negative feelings and attitudes about people based on characteristics like race, ethnicity, age, and appearance. Because this cognitive process functions in our unconscious mind, we are typically not consciously aware of the negative racial biases that we develop over the course of our lifetime.” Thomas Rudd, *Racial Disproportionality in School Discipline: Implicit Bias is Heavily Implicated*, Kirwan Institute Issue Brief, Kirwan Institute for the Study of Race and Ethnicity, The Ohio State University, February 2014.