



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

January 13, 2015

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I. Introduction

The NAACP Legal Defense & Educational Fund, Inc. (LDF) welcomes this opportunity to address the President’s Task Force on 21st Century Policing (the “Task Force”) regarding the critical need to strengthen public trust and foster strong relationships and mutual respect between local law enforcement and the communities they protect, 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. Because LDF has continuously engaged in litigation and policy advocacy designed to eliminate the pernicious influence of racial bias in all stages of America’s criminal justice system, its testimony is the product of decades of research and experience.

Last year, the longstanding problem of police abuse and excessive force in communities of color came to a head.¹ From Michael Brown’s tragic death in Ferguson, Missouri to Eric Garner’s painful death on Staten Island, New York at the hands of the police, to countless incidents of lethal and excessive force exercised by law enforcement against African Americans nationwide, we witnessed an epidemic of police violence. This horrific series of brutal incidents is neither isolated nor new.² It is, instead, emblematic of a shameful and longstanding national pattern of violence and mistreatment of African Americans by the police. This culture of abuse certainly reflects deeply rooted deficiencies in law enforcement policies, practices, accountability structures, training, and transparency. More importantly, however, it betrays an ethos of explicit and implicit racial bias in policing.³ Because these problems combine with lethal effect, the immediate acknowledgement and amelioration of these law enforcement shortcomings are essential.

LDF has already called upon the Department of Justice (DOJ) to use its authority and substantial resources to address the unjustified use of lethal and excessive force by law enforcement against African Americans.⁴ In doing so, we contend that federal financial support for local police departments through various federal grant programs must comply with the requirements of Title VI of the Civil Rights Act of 1964, which requires the DOJ to ensure that federally funded programs are administered free of discrimination.⁵ This obligation compels the DOJ to properly assess and ultimately ensure that law enforcement recipients of federal funding have taken affirmative steps to eliminate bias in policing practices.⁶ LDF also presented testimony before Congress calling for federal reforms to ensure police accountability, the demilitarization of local law enforcement, and the elimination of government-sponsored military-style equipment in public schools.⁷ Finally, LDF

joined other national civil and human rights organizations in seeking comprehensive policing reforms.⁸

LDF remains engaged in efforts to ensure that its prior requests are implemented. LDF's testimony before this Task Force complements those efforts with a focus on the ways law enforcement can: promote and achieve accountability among officers and departments; improve training that results in better police practices; and ensure transparency such that the factors which contribute to police violence in communities of color can be promptly identified and eliminated.⁹ LDF believes that these and any other reforms must be complemented by a clear, meaningful, and honest effort to acknowledge and address the racial bias which far too often defines interactions between police and communities. It is our hope that the proposals offered here will improve community-police relationships, help promote racial fairness, and facilitate a much-needed transformation in the culture of policing, resulting in law enforcement practices that are bias-free, respectful, and professional.

II. Accountability in Policing

LDF recommends that the Task Force take appropriate steps to ensure that:

- All police departments have clear, state of the art policies and guidelines governing: all forms of police use of force; the respectful treatment of people in routine encounters on the street; the improper use of race and ethnicity in police actions, including, but not limited to street encounters, traffic stops, and arrests;¹⁰
- All police departments collect, and make available to the public, data related to race and police-citizen encounters, including statistical information on racial disparities in traffic stops, street encounters, arrests, and use of force incidents;
- All police departments develop and maintain procedures for the prompt, thorough, and fair investigation of any and all allegations of officer misconduct;
- Independent investigative and prosecutorial authorities are available to address any and all potential violations of civil rights and criminal laws by members of law enforcement;
- All police departments impose appropriate discipline, including termination, where unlawful or inappropriate physical violence or other misconduct is confirmed;
- All police departments implement Early Intervention Systems to identify and correct patterns of problematic officer conduct.

Accountability is necessary to ensure that police officers and police departments are held responsible for their improper and unlawful behavior. Thus,

the development and implementation of clear and publicly disseminated policies and guidelines for police organizations and individual officers involved in critical incidents regarding the life, safety, and equal treatment of all people—regardless of race—are essential.

Accountability also requires clarity about the scope and frequency of problems with police departments and officers. The collection and public dissemination of data that quantifies not only civilian arrest rates, but also the rates of police violence, police shootings, police misconduct, racial disparities in police-civilian interactions, and rates of racial discrimination (and other) complaints is critical. At present, these types of data are unreliably collected in a piecemeal fashion. This effort is undermined by varied reporting standards and police departments that do not provide data.¹¹ As a result, our collective concerns with policing are largely informed by media reports and anecdotal evidence, instead of hard data that is consistent across law enforcement agencies.

The policies recommended above are effective only to the extent that they are consistently enforced. Meaningful enforcement requires the prompt and thorough investigation, correction, and punishment of any and all officer misconduct and improper racial disproportionalities. First-line supervisors, internal affairs units, and professional standards units must thoroughly review officer conduct and make fair and transparent findings.¹² In instances when police misconduct may violate the criminal law, those cases should be immediately referred to investigatory and prosecutorial authorities that are wholly independent of the local prosecuting attorney's office.¹³ When officer violations are identified, appropriate discipline—whether intra-departmental, or through the criminal justice system—must follow. The settlements reached by the DOJ's Civil Rights Division with local law enforcement agencies provide a useful model of appropriate investigation and discipline procedures.¹⁴

Early Intervention Systems (EIS) serve as an important element of a comprehensive accountability system.¹⁵ An EIS permits the identification of officers with problematic patterns of performance and enforcement—such as citizen complaints about inappropriate use of force and racial bias—and the immediate provision of necessary ameliorative interventions such as training and counseling. An EIS can identify and correct officer performance problems before they develop into the lethal, violent, or otherwise serious concerns.

III. Law Enforcement Training

LDF recommends that the Task Force takes appropriate steps to ensure that:

- All police departments train their officers on explicit and implicit racial bias, the appropriate use of force, de-escalation techniques, and the proper and courteous treatment of youth and individuals with mental health concerns;
- All law enforcement training programs reflect the best practices and remain informed by contemporary developments in social science and psychology;
- All police departments put in place measures to ensure that training is effective and responsive to the issues encountered by police.

The current crisis in police-community relations makes clear that training must focus squarely on explicit and implicit racial bias, the use of force, de-escalation techniques, and the appropriate engagement with youth and those who exhibit mental health concerns.

False and negative attitudes and opinions about race are embedded in American culture, and inevitably affect law enforcement culture. Experience and science confirm the fact that race shapes and informs the manner in which law enforcement officers respond to encounters with civilians, such that routine interactions can be—and are—transformed into lethal confrontations.¹⁶ Numerous African-American police officers have spoken publicly about the culture of racial bias and fear that exists within police departments.¹⁷ Similarly, President Obama has recognized that there is a “gulf of mistrust” between local communities and law enforcement,¹⁸ and that young men of color are “left behind and seen only as objects of fear.”¹⁹ This common knowledge and experience is confirmed by research, including studies showing that police perceive African-American boys and young adults as both older and more culpable than their white peers.²⁰ Thus, it is sad but not surprising that 2014’s rash of police shootings overwhelmingly involved young African-American males.

Such attitudes and biases must be acknowledged and confronted in order to be eliminated. Thus, law enforcement training must be informed by social scientists, psychologists, and other experts on the science of bias in order to curtail the pernicious influence of racial bias in policing.²¹ Likewise, training that provides clear guidance on a police officer’s use of force, teaches de-escalation tactics, and offers workable methods for interacting with youth and individuals with mental illness must be implemented to effectively reduce the likelihood of a harmful police encounter. Police department training units should regularly survey other law enforcement agencies, the recommendations of professional associations, social scientists and other experts in the field to stay abreast of the best practices. Finally, measures must also be put in place to ensure that the training is effective, and addresses issues regularly encountered by law enforcement officers.

IV. Transparency in Policing

LDF recommends that the Task Force take appropriate measures to ensure that:

- Police departments provide mechanisms for civilian oversight of police;

- Police departments regularly collect, analyze and publicly release data on use of force, officer involved shootings and homicides of civilians, and other complaints, including allegations of racial bias and discrimination;
- Police departments make public their policies and practices regarding the use of force in police-civilian encounters and provide ample opportunity for public comment and input into policy and practice documents.

Transparency is a necessary component of any police department effort to build and maintain community trust and cooperation. Thus, citizen oversight of law enforcement, the public release of policing data, and the public availability of police policy and procedure manuals have helped to foster productive dialogue and improve relationships between communities and police.²²

Citizen oversight, often in the form of an auditor, monitor, or inspector general, allows for civilian review of law enforcement policies, procedures, and practices. They routinely examine a range of issues, including the deployment of canine units, standards in police-citizen encounters, the investigation of police misconduct, and trends in civil suits against the department. The review typically concludes with a public reporting of recommendations, in order to enhance transparency and improve police practices.²³

As detailed above, the public release of data related to race and policing is a critical component of any effort to improve police-community relations.²⁴ Public access to data on police-citizen encounters and use of lethal and excessive force—with particular attention paid to race—would provide greater insight into the character and nature of citizen complaints against police so that specific trends can be identified and addressed in a comprehensive and productive manner.

Finally, a number of police departments nationwide make their policy and procedure manuals publicly available. This fosters community understanding and trust by informing people about the policies that guide police actions. These efforts should be complemented by public input when a department is considering a significant policy revision. Thus, a police department should convene community forums to provide the public with the opportunity to comment and make recommendations for revisions.

V. Conclusion

Our recommendations, which focus on accountability, training, and transparency, are informed by an overarching concern with racial bias and the dire need to eliminate its influence on policing. It is our hope that the reform measures outlined in this submission will prove useful to the Task Force as it engages in the critically important work of improving the relationship between law enforcement and the communities they protect and serve.

Endnotes

¹ Indeed, 2014 saw an unprecedented rash of police violence against African Americans. For example, on July 1, 2014, Marlene Pinnock, a 51-year-old unarmed, African-American woman was brutally beaten by a California Highway Patrol officer. Richard Winton, Kate Mather, & Joseph Serna, *Woman videotaped in CHP beating was walking into traffic, report says*, L.A. Times, July 28, 2014, <http://www.latimes.com/local/lanow/la-me-ln-woman-punched-chp-20140728-story.html>. On August 5, 2014, John Crawford III, a 22-year-old African-American man was killed by police while holding a pellet rifle in an Ohio Wal-Mart. Steve Bennis & Eric Robinette, *Man police shot in Walmart killed over fake gun, family says*, Dayton Daily News, Aug. 6, 2014, <http://www.daytondailynews.com/news/news/man-police-shot-in-walmart-killed-over-fake-gun-fa/ngw77/>. On August 11, 2014, Ezell Ford, an unarmed 25-year-old African-American man was shot to death by a Los Angeles Police Department officer. Thomas Johnson, *Ezell Ford: The mentally ill black man killed by the LAPD two days after Michael Brown's death*, The Washington Post, Aug. 15, 2014, <http://www.washingtonpost.com/news/morning-mix/wp/2014/08/15/ezell-ford-the-mentally-ill-black-man-killed-by-the-lapd-two-days-after-michael-browns-death/>. On November 20, 2014, Akai Gurley, an unarmed African-American man, was shot and killed by a New York Police Department officer in Brooklyn, New York. Michael Wilson, *Officer's Errant Shot Kills Unarmed Brooklyn Man*, N.Y. Times, Nov. 21, 2014, <http://www.nytimes.com/2014/11/22/nyregion/new-york-police-officer-fatally-shoots-brooklyn-man.html>. And on November 22, 2014, Tamir Rice, a 12-year-old African-American boy, was shot to death by Cleveland, Ohio police officers as he played with a toy gun at a park near his home. German Lopez, *Cleveland police shot and killed black 12-year-old Tamir Rice as he carried a toy gun*, Vox, Jan. 8, 2015, <http://www.vox.com/2014/11/24/7275297/tamir-rice-police-shooting>.

² See Ryan Gabrielson, Ryann Grochowski Jones & Eric Sagara, *Deadly Force, in Black and White*, ProPublica, Oct. 10, 2014, <http://www.propublica.org/article/deadly-force-in-black-and-white>; Christopher Mathias & Carly Schwartz, *The NYPD Has a Long History of Killing Unarmed Black Men*, July 18, 2014, http://www.huffingtonpost.com/2014/07/18/killed-by-the-nypd-black-men_n_5600045.html; Rich Juzwiak & Aleksander Chan, *Unarmed People of Color Killed by Police 1999-2014*, Dec. 8, 2014, <http://gawker.com/unarmed-people-of-color-killed-by-police-1999-2014-1666672349>

³ Cheryl Staats et al., *State of the Science: Implicit Bias Review*, Kirwan Inst., 2013, at 36-45, available at http://www.issuelab.org/resource/state_of_the_science_implicit_bias_review_2013. Phillip Atiba Goff, Matthew Christian Jackson, Carmen Marie Culotta, Brooke Allison Lewis Di Leone & Natalie Ann DiTomasso, *The Essence of Innocence:*

Consequences of Dehumanizing Black Children, 540 (Feb. 24, 2014), <https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf>.

⁴ LDF has also 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.

⁵ 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.

⁶ 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.

⁷ 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>.

⁸ 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-%208-18_0.pdf.

⁹ Dr. Samuel Walker, an emeritus professor from the University of Nebraska-Omaha, and a nationally recognized expert on police reform and accountability, made valuable contributions to the recommendations contained in this testimony.

¹⁰ A Model Policy on the use of race in policing can be found in Lorie Fridell et al., *Racially Biased Policing: A Principle Response* 51-53 (2001).

¹¹ See Wesely 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.

¹² Notably, achieving this goal requires that police departments properly train, supervise, and hold accountable first-line supervisors.

¹³ In the wake of the grand jury’s failure to indict the officer responsible for Eric Garner’s death, New York Attorney General Eric T. Schneiderman requested that New York Governor Andrew Cuomo issue an interim executive order directing the Office of the Attorney General to investigate and, if necessary, prosecute cases involving unarmed civilians killed by law enforcement officers. Press Release, N.Y. State Office of the Att’y Gen., Att’y Gen. Eric Schneiderman Requests Executive Order To Restore Public Confidence In Criminal Justice System (Dec. 8, 2014), <http://www.ag.ny.gov/press-release/ag-schneiderman-requests-executive-order-restore-public-confidence-criminal-justice>. See also Editorial, *A Crisis of Confidence in Prosecutors*, Dec. 8, 2014, <http://www.nytimes.com/2014/12/09/opinion/a-crisis-of-confidence-in-prosecutors.html>.

¹⁴ Settlements by the Special Litigation Section of the Civil Rights Division are available at: <http://www.justice.gov/crt/about/spl/findsettle.php#police>. The DOJ’s settlement with the City of Albuquerque and agreement in principle with the

Newark Police Department exemplify effective investigative protocols and procedures.

¹⁵ See U.S. Dep't of Justice, *Principles for Promoting Police Integrity*, Nat'l Criminal Justice Reference Serv., 10 (Jan. 2001), <https://www.ncjrs.gov/pdffiles1/ojp/186189.pdf> (describing components of an Early Intervention System); see also Samuel Walker, *Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide*, U.S. Dep't of Justice, 1-162 (2003), <http://www.cops.usdoj.gov/Publications/e07032003.pdf>.

¹⁶ The fact that race influences policing is widely accepted. See generally L. Song Richardson & Phillip Atiba Goff, *Interrogating Racial Violence*, 12 Ohio St. J. Crim. L. 115 (2014); L. Song Richardson, *Arrest Efficiency and the Fourth Amendment*, 95 Minn. L. Rev. 2035, 2052 (2011) (“Based on the science, it is reasonable to conclude that the police target, stop, and search blacks more often than whites based upon the operation of implicit biases.”) Bernard Harcourt, *Henry Louis Gates and Racial Profiling: What's the Problem?* (John M. Olin Law & Econ., Working Paper No. 482, 2009), available at <http://ssrn.com/abstract=1474809>; Cynthia Lum, Ph.D., *Does the “Race of Places” Influence Police Officer Decision Making?*, Nat'l Criminal Justice Reference Serv., 58 (Dec. 2009), <https://www.ncjrs.gov/pdffiles1/nij/grants/231931.pdf>; Robert A. Brown & James Frank, *Race and Officer Decision Making: Examining Differences in Arrest Outcomes between Black and White Officers*, 23 ACJS 97 (2006), available at <http://www.uncfsu.edu/Documents/Criminal-Justice/Brown2.pdf>.

¹⁷ For example, an African-American female police officer in St. Louis discussed how her white colleagues stereotype and fear African Americans and noted that “their rationale, perception and interpretation of the issues are so far-fetched.” Aleem Maqbool, *African-American Police Officer: Ferguson ‘Heart Wrenching,’* BBC News, Aug. 25, 2014, <http://www.bbc.com/news/world-us-canada-28890068>; see also *Reddit Hudson Being a Cop Showed me Just how Racist and Violent the Police Are. There’s Only One Fix*, The Washington Post, Dec. 6, 2014, <http://www.washingtonpost.com/posteverything/wp/2014/12/06/i-was-a-st-louis-cop-my-peers-were-racist-and-violent-and-theres-only-one-fix/>

¹⁸ *Few Say Police Forces Nationally Do Well in Treating Races Equally*, Pew Research Ctr. (Aug. 25, 2014), <http://www.people-press.org/2014/08/25/few-say-police-forces-nationally-do-well-in-treating-races-equally/>; see also Noah Gordon, *Americans’ Deep Racial Divide on Trusting the Police*, The Atlantic (Aug. 20, 2014, 3:11 PM) <http://www.theatlantic.com/politics/archive/2014/08/americans-deep-racial-divide-on-trusting-the-police/378848/> (detailing public polling data that

reveals African-American distrust of police); Frank Newport, *Gallup Review: Black and White Attitudes Toward Police*, Aug. 20, 2014, http://www.gallup.com/poll/175088/gallup-review-black-white-attitudes-toward-police.aspx?utm_source=tagrss&utm_medium=rss&utm_campaign=syndication&utm_reader=feedly (polling data demonstrates that African Americans “have significantly lower levels of confidence in the police as an institution, and lower assessments of the honesty and ethics of police officers specifically.”).

¹⁹ Transcript, “Obama’s remarks on Ferguson, Mo. and Iraq,” *The Washington Post*, Aug. 18, 2014, http://www.washingtonpost.com/politics/running-transcript-obamas-remarks-on-ferguson-mo-and-iraq/2014/08/18/ed29d07a-2713-11e4-86ca-6f03cbd15c1a_story.html.

²⁰ See Phillip Goff et al. *The Essence of Innocence: Consequences of Dehumanizing Black Children*, *J. of Psychol. & Soc. Psychol.*, Am. Psychological Assoc. 526-45 (2014), <http://www.apa.org/pubs/journals/releases/psp-a0035663.pdf>.

²¹ See note 16 *supra*; Chris Mooney, *The Science of Why Cops Shoot Young Black Men*, *Mother Jones*, Dec. 1, 2014, <http://www.motherjones.com/politics/2014/11/science-of-racism-prejudice>. Several organizations focus specifically on the science of bias and provide training to law enforcement. See Project Implicit, <http://projectimplicit.net/index.html> (last visited Jan. 9, 2015); Center for Policing Equity, University of California Los Angeles, <http://cpe.psych.ucla.edu/> (last visited Jan. 9, 2015).

²² See Stephanos Bibas, *Transparency and Participation in Criminal Procedure*, 81 *N.Y.U. L. Rev.* 911, 958 (2006) (describing ways that public rulemaking and data can enhance trust between police and the community)

²³ The role of external citizen oversight is discussed in Samuel Walker and Carol Archbold, *The New World of Police Accountability*, 2nd ed. (Newbury Park, CA: Sage, 2014).

²⁴ To preserve the privacy of both citizens and officers, the data need only be presented in summary form, such as a chart or table that lists the number of citizen complaints received, the number of complaints in the various categories (excessive force, offensive language, etc.), and the outcomes of the complaint investigations within each category (thus, indicating, for example, the percentage of force complaints sustained in favor of the complainant).