Center for American Progress

The Intersection of Policing and Race

By Danyelle Solomon   September 1, 2016

Although the acrimony between communities of color and law enforcement is currently grabbing news headlines, it is an old story with the seeds of discord planted long ago. The intersection of race and policing and the resulting rancor has roots that can be traced back to the very origins of this nation. Therefore, understanding this complicated history and its lingering vestiges is key to finding solutions to the very serious problems that continue to fester today.

Policing in America originated in colonial times and featured two primary modes—centralized municipal policing and slave patrols.[1] The first, which provided the framework for modern-day law enforcement, began in 1838 in Boston, Massachusetts, as a response to increased public intoxication, gambling, and population growth.[2] Slave patrols on the other hand, originating in South Carolina in the early 1700s, served the primary functions of apprehending escaped slaves and instilling fear to deter revolts and maintain discipline.

Slave patrols and centralized municipal policing were both known for their brutality and ruthlessness.[3] Over time and with the eventual passage of constitutional amendments outlawing slavery, slave patrols were officially disbanded. However, unofficially, remnants of slave patrols and their mandate remained very much in place. Much of the intimidation, violence, and murders of newly freed slaves and later their descendants continued unabated for decades, carried out by groups such as the Ku Klux Klan, which rarely faced punishment from local police departments.[4] According to a 2006 FBI Threat Assessment Report, "the Ku Klux Klan is notable among white supremacist groups for historically having found support in many communities, which often translated into ties to local law enforcement."[5]

In more recent decades, local police departments across the country have made positive changes. Advancements of technology, science, and social justice have affected law enforcement for the better. Policing originated as a responsive model and evolved into a proactive model with an emphasis on preventing crime. For example, instead of responding to gambling brawls or public drunkenness, we now have laws and policing procedures to curb such behavior. The implementation of new technologies and the incorporation of science now help solve and prevent crimes. Police officers have formed unions and have implemented some policies and practices to help reduce corruption and provide greater accountability. The creation of internal affairs units and the implementation of both dash and body cameras are just a few examples of efforts aimed at helping to reduce corruption and increase accountability.

Despite these advances and improvements in policing, remnants of the past continue to permeate throughout American society. Consistent polling over the years reveal the differences in African American and white American attitudes toward law enforcement in the United States. According to a 2014 McClatchy-Marist Poll, 76 percent of African Americans believed there was "a problem with the justice system when it comes to law enforcement and race," compared to 33 percent of their white counterparts.[6] In addition, only 22 percent of African Americans have a great deal of confidence in law enforcement, compared to 50 percent of their white counterparts.[7]

Today, people of color are overrepresented at every point in the criminal justice system. People of color make up more than 60 percent of the prison population, yet they only represent 39.9 percent of the U.S. population. More specifically, African Americans represent 13 percent of the U.S. population, yet comprise 40 percent of those incarcerated. Statistically, 1 in 3 African American males born in 2001 will go to prison at some point during their lifetime; for Latino males, the number is 1 in 6. African Americans are also 2.5 times more likely to be arrested than their white counterparts.[8] In their interactions with law enforcement officers, young black males are 21 times more likely to be shot by a law enforcement officer than their white counterparts.[9]

In order to move forward and improve relations between communities and law enforcement, it is essential to have open and honest discussions about the role of law enforcement in American communities. As FBI Director James Comey stated, "At many points in American history, law enforcement enforced the status quo, a status quo that was often brutally unfair to disfavored groups."[10] This will require recognition of the origins of policing; acknowledgement of the continued disproportionate impact and overly aggressive policing in communities of color; and adoption of a progressive, forward-looking framework for what all Americans want to see in their local law enforcement agencies.

This issue brief offers five policy recommendations to bridge the divide and build trust between communities of color and law enforcement:

1. Institute a special prosecutor policy and create community police review boards
2. Expand law enforcement training and community-centered responses
3. Institute statewide use-of-force guidelines
4. Mandate data collection
5. Invest in officer and community wellness

1. Institute a special prosecutor policy and create community police review boards

One of the most important ways that state and local officials can build trust between law enforcement and communities of color is to ensure accountability and justice. Research and data show that communities of color are disproportionately affected at all stages of the criminal justice system. In addition, only 30 percent of Americans believe that law enforcement departments are effective and fair in holding officers accountable for misconduct.[11] The perception—real or perceived—is that local prosecutors have far too great of an interest in protecting and justifying the actions of local law enforcement. Furthermore, the reality of racial disparities within the criminal justice system leads to an erosion of trust in the actors who operate the system.

When trying criminal cases, prosecutors rely on testimony and evidence collected by their local police officers. Prosecutors and law enforcement work together as a team in bringing cases. Therefore, when the cases being brought are against their fellow law enforcement colleagues, impartiality is questioned.[12] In an effort to ensure accountability and remove any perception of conflicts of interest, a special prosecutor should be assigned when deadly use of force occurs. Special prosecutors are external officers of the court who can be assigned to investigate specific criminal charges filed against government officials and law enforcement officers. The need for external and independent prosecutors and investigators in officer-involved shootings was also supported by the bipartisan President's Task Force on 21st Century Policing, which held that such implementation "will demonstrate the transparency to the public that can lead to mutual trust between community and law enforcement."[13]

While there are several approaches employed across the country that can be used as a model, the Center for American Progress strongly encourages jurisdictions to adopt an automatic referral model to handle investigations and prosecutions of law enforcement killings of civilians, sexual misconduct by law enforcement officers, and excessive use of force charges. Automatic referrals would allow cases to immediately be shifted to an independent special prosecutor without relying on other elected officials for approval. New York Attorney General Eric Schneiderman, in asking for special authority to take over cases from local prosecutors, stated that the central issue in these cases should be "whether there is public confidence that justice has been served."[14] When creating these new avenues for stronger accountability and transparency, jurisdictions should also ensure that offices are properly staffed and funded to handle these cases.

In addition to the implementation of a special prosecutor policy, the community itself should have a role in ensuring police accountability. One such tool is the civilian review board, which operates as an extension of the democratic process. Review boards allow citizens and non-sworn officers to investigate complaints and misconduct by law enforcement officers, allowing for public review of law enforcement departments. Originally created in the late 1940s in response to police brutality and the lack

of accountability for misconduct, such review boards were not seen as effective. It was not until the civil rights movement of the 1960s that civilian review boards expanded substantially.[15] While there are different models for such boards, CAP recommends that jurisdictions give civilian review boards the power to independently investigate complaints and make recommendations to the police chief or commissioner regarding incidents. In reviewing the 50 largest police departments in the country, more than half lack a civilian review board with independent investigative authority.[16] In addition, even among those boards that have some investigative authority, many members are appointed by either a police commissioner or mayor. Detroit is the only city with a civilian review board in which all members are elected by Detroit residents.[17]

Civilian review boards are essential to building trust with the local community. A board that has independent investigative authority, the ability to provide recommendations, and a balance of appointed officials and community leaders will help ensure that the community feels engaged in the decision-making process that holds law enforcement accountable. Failure to establish a community review board with these key components only leads to a weak board. As Udi Ofer, executive director of the American Civil Liberties Union of New Jersey, stated, "A weak board is worse than no board at all because it gives the illusion of accountability, but actually provides little to none."[18]

2. Expand officer training and community-centered responses

Law enforcement officers are just like the rest of Americans. They are exposed to the same hidden and overt racial biases to which all Americans are exposed.[19] Yet what makes them different from other Americans is the extraordinary power they hold and protection they receive as officers of the state. Given their enormous authority and the responsibility that it carries, quality training is essential. However, the current training model for law enforcement officers fails to adequately correspond to the wide range of issues they encounter on the job. Training therefore must be expanded to include issues such as implicit bias, the use of force, and instruction on de-escalation and dealing effectively with a range of social issues, including mental illness. Moreover, this training must be treated as a form of continuing education. Such training expansion will better prepare officers to handle the many challenges they encounter on a daily basis.

According to the Bureau of Justice Statistics, an average of 168 hours of training was required for officers, between 2011 and 2013, on the topics of firearms, defensive tactics, and use of force in state and local law enforcement training academies.[20] On average, 71 hours were dedicated to firearms training and 60 hours focused on self-defense. However, an average of only 21 hours was spent on the use of force—and that 21 hours included any and all de-escalation training.[21] Clearly, this is not a balanced approach to officer training. In addition, the bureau found that 70 percent of African Americans who have been subject to law enforcement use of force believe that the force they experienced was excessive.[22]

African Americans are three to five times more likely than white Americans to believe that law enforcement misconduct frequently occurs in their city, and African Americans are three times more likely to say that law enforcement misconduct occurs "very often" in their neighborhood.[23]

Although research and data reveal that African Americans are no more violent than white Americans, stereotypes persist. Dr. Philip Goff, president and cofounder of the Center for Policing Equity, has produced research showing that some law enforcement officers perceive African Americans as "hyper-masculine" and therefore view them as being more dangerous, leading to more violent interactions.[24] Despite countless reports citing empirical evidence that African Americans use drugs at the same rate or lower than their white counterparts,[25] African Americans are disproportionately stopped, searched, and arrested for drug possession and drug-related crimes and, if found guilty, serve longer sentences than their white counterparts. In addition, a 2012 study found that during a video-game simulation, officers "were quicker to shoot an armed black person, and slower to refrain from shooting an unarmed black person, than they were with members of any other racial group."[26]

To combat these biases, officers must be trained to recognize their prejudices. While this training will not remove bias per se, it will raise awareness about it. Recently, the U.S. Department of Justice announced that it would train all its law enforcement agents and prosecutors to recognize and address their own implicit biases.[27] This is a good first step and an important model for what should be done at the state level. In a memo to employees, Deputy Attorney General Sally Yates noted that implicit bias "presents unique challenges to effective law enforcement, because it can alter where investigators and prosecutors look for evidence and how they analyze it without their awareness or ability to compensate."[28] By recognizing one's biases, one can reduce them. It is crucial that bias training be continuous and mandatory. Just as importantly, this expansion in training cannot be the sole source for change; instead, it should be viewed as part of the larger conversation around improving community and law enforcement relations.

In addition to expanding training for law enforcement, the Center for American Progress recommends that law enforcement agencies invest in community response teams. As mentioned above, law enforcement officers are forced to address many complicated societal issues beyond the scope of their primary duties and functions. On a daily basis, law enforcement interacts with individuals suffering from mental health concerns, substance abuse disorders, disabilities, trauma, and poverty.[29] Law enforcement is consistently being asked to be the first line of defense on issues that are beyond the scope of their official duties without being provided with the resources to do so. To provide law enforcement support to address these issues, states should support the collaboration of law enforcement units and multidisciplinary teams. Many jurisdictions have already established a Crisis Intervention Team, or CIT, which increases collaboration between law enforcement and mental health providers with the primary goal of providing the services needed by individuals with mental health conditions, resulting in fewer arrests.[30] Between 7 percent and 10 percent of all police interactions are with individuals with mental health conditions,[31]

and according to Mike Woody, president of CIT International, "a 40-hour course does not make an officer an expert at handling these calls."[32] Instead, partnering with experts and working together as a team helps to de-escalate situations and better provide the services that are needed to the individual in question.

As state and local officials create their annual budgets, they should prioritize allocating state and federal dollars to create multidisciplinary community response teams that consist of mental health professionals, substance abuse professionals, and social workers. By working with law enforcement, such teams are able to utilize a wide array of expertise to deliver the services actually needed within a community.

3. Institute statewide guidelines for "use of force"

According to the International Association of Chiefs of Police, use of force is defined as "the amount of effort required by police to compel compliance by an unwilling subject."[33] Currently, there is no universally agreed-upon definition or standard governing when and how officers should use force.[34] No two situations are exactly the same; therefore, defining when and how to use force becomes complicated. There must be an appropriate balance between law enforcement officers ability to protect themselves on the job while also protecting their fellow citizens from harm, but it is essential to ensure that individuals being apprehended by law enforcement are not subject to unlawful and unnecessary use of force.

In a fascinating new preliminary study released by Harvard professor Ronald Fryer Jr., data revealed that nonlethal use of force by law enforcement against African Americans and Latinos is significant. Fryer looked at 10 cities and counties to assess whether law enforcement was actually treating African Americans differently than their white counterparts. According to the initial results, "blacks and Hispanics are more than fifty percent more likely to have an interaction with police which involves any use of force."[35] This is further evidence that communities of color consistently have negative interactions with law enforcement, which contributes to a lack of trust between the two. The constant harassment and mistreatment of a particular community by law enforcement creates an environment of mistrust and skepticism, further entrenching the belief that law enforcement is not there to protect and serve. This type of toxic environment leads to community disbelief even when deadly force used by a law enforcement officer is justifiable.[36]

While Fryer's research, among others, helps to define the scope of the problem, a complete picture is still lacking. Based upon an examination of the FBI's law enforcement shooting data, an average of about 400 shootings of civilians by law enforcement have occurred annually over the past decade.[37] But this calculation is flawed because the FBI data lack a complete breakdown of officer-involved shootings or any demographics about the shootings. This lack of data led the *Washington Post* and *Guardian* newspapers to begin tracking

these incidents in the aftermath of the shooting of Michael Brown by an officer in August 2014. Based on their calculations, African Americans are being shot at a rate 2.5 times higher than white Americans.[38] According to *The Washington Post*, in 2015, there were 990 people killed by law enforcement, more than double what the FBI is formally reporting.

The research and data gaps are a call to state and local officials to require their law enforcement departments to not only have clearly defined policies on when and how to use force when interacting with the public in a wide array of situations but also to collect data on each incident. By producing comprehensive policies on use of force that include a mechanism for training, investigations, prosecutions, and data collection, jurisdictions can provide the public with transparency, access to information, and avenues for accountability. These are key ingredients for restoring community trust in law enforcement.

4. Mandate data collection

The proof is in the pudding, or in this case, the proof can be found in the numbers. In October 2015, FBI Director Comey, in remarks made before the U.S. House of Representatives, said, "[W]e can't have an informed discussion, because we don't have data."[39] As discussed above, it is essential that state and local officials mandate data collection regarding use of force by law enforcement. There is a significant gap in uniformity when gathering these types of data. Law enforcement agencies are not required to collect these data, which makes it challenging to understand the complete scope of the problem. In addition, the practicality of collecting these data is challenging.

The FBI's Uniform Crime Reporting Program is the primary source for all homicide data in the United States, including police-involved deaths. Unfortunately, states are not mandated to provide this information to the FBI, yielding patchwork data sets.[40] Most law enforcement agencies don't include justifiable homicides in their official murder count, failing to provide an accurate and complete description of what is happening in the state for the department to review.[41] For example, the deaths of Eric Garner and Akai Gurley—both in New York—would be counted differently. The death of Eric Garner is not counted because the officer was not indicted on charges, compared to the officer in the Gurley case, who was indicted. These omissions in reporting fail to provide the public with an accurate assessment of what is happening in their communities. Moreover, while other jurisdictions may report data, it's typically done in a piecemeal fashion.[42]

In an effort to provide better data, Congress passed the Death in Custody Reporting Act of 2013, a bill that would mandate such reporting by states and would give the U.S. attorney general the discretion to reduce federal law enforcement funding by as much as 10 percent to states that fail to comply.[43] This legislation requires states to submit a wide range of information when an individual dies in custody or while being detained

or arrested and, most importantly, "a brief description of the circumstances surrounding the death." In addition, it requires the attorney general to conduct a study of this information to "determine means by which such information can be used to reduce the number of such deaths."[44] In August 2016, the U.S. Department of Justice requested public comment regarding the changes to the current model of data collection under the Arrest-Related Death Program with the reauthorization of the Death in Custody Reporting Act in 2013. The department crafted a "mixed methodology" approach to address the concerns raised about the lack of accurate and complete data.[45] More specifically, the new methodology will rely on open sources to identify potential cases but will also be supplemented with reports from law enforcement agencies, corners, and medical examiners for the specific details on the decedent and incident on a quarterly basis.[46]

In addition, the President's Task Force on 21st Century Policing recommended that policies on use of force should require agencies to collect, maintain, and report data to the federal government on all officer-involved shootings—whether fatal or nonfatal—as well as all in-custody deaths.[47] By obtaining access to these data, the federal government, policymakers, and communities can be properly informed when making policy decisions. Some states have already begun taking steps to improve their data collection. For example, in 2015, California Attorney General Kamala Harris created a new program that provides increased public access to data about in-custody civilian deaths to better inform policy-making and also to increase transparency and build trust with the community.[48]

The passage of the Death in Custody Reporting Act and the recommendations by the President's Task Force on 21st Century Policing are good first steps. However, state and local officials should not wait on the requirements of federal law. Instead, they should begin to implement these changes proactively in their local departments, including mandating data collection and updating law enforcement computer systems. These data can be used to increase transparency, provide accountability, and also offer a tool to incentivize jurisdictions to make improvements and address discrimination.

5. Invest in officer and community wellness

Trauma is an emotional response to a terrible event that can lead to shock and denial, as well as physical complications.[49] Individuals who are routinely exposed to traumatic events and related daily pressures and who are trained to defend themselves against such incidents can experience high levels of stress. Law enforcement officers regularly witness the effects of poverty, crime, violence, death, and drugs on communities, as well as personally experiencing violence and the risk of violence toward themselves and their colleagues. They also are routinely criticized, which typically leads to isolation or internalization.[50] The stress of the job and feelings of isolation can lead to stress and trauma. The Office of Community Oriented Policing Services within the U.S. Department of Justice established

a National Officer Safety and Wellness Group in 2011 at the request of former Attorney General Eric Holder.[51] The purpose of the group is to encourage a culture shift toward health and wellness within law enforcement agencies. At the group's first convening, some of the most critical areas identified as topics for concern included the need to provide mental health services and support programs, destigmatizing the need to ask for help and services, and providing officers with a confidential avenue to access such services.[52]

This desire to shift internal culture and provide services to officers dealing with trauma is also supported by the International Association of Chiefs of Police, which, in 2012, created the Center for Officer Safety and Wellness. Moreover, access to services is essential for the safety of officers as well as citizens.[53] However, as many jurisdictions face shrinking budgets and competing funding priorities, it is important to protect funding for the physical and mental health of officers.[54] Simply put, officer wellness leads to increased public safety. Officers with mental, physical, or substance abuse concerns cannot serve their communities as well as possible and may even be more of a danger than a help to the community they are sworn to serve.

Similarly, the communities police serve need access to health services. With the closure of mental health and substance abuse facilities, many individuals who officers encounter don't have access to the services they need and instead end up in jails and prisons.[55] Furthermore, community members also suffer from trauma. Research has shown that individuals living in high-crime and perceived high-crime neighborhoods also suffer higher levels of trauma and stress. According to a study by the *American Journal of Orthopsychiatry*, a person does not have to have direct experience with violent crime to be affected.[56] A perception of violence in one's ZIP code was enough to trigger posttraumatic stress disorder. Other studies have revealed a correlation between violence and cognitive ability. Resources should therefore not only go to officers but also to communities. As discussed in a recent Prevention Institute report, there is a growing need to combat community trauma through public health services in order to build resilience in communities faced with constant violence, systemic poverty, high unemployment, and poor health conditions.[57] For example, mediation efforts in high-crime neighborhoods across Baltimore helped to reduce homicides by nearly 60 percent according to an evaluation by the Centers for Disease Control and Johns Hopkins University.[58]

Therefore, CAP encourages state and local governments to prioritize funding for community health services specifically targeted toward mental health and substance abuse disorders. In addition, CAP recommends that officer wellness programs be provided as a proactive, not reactive, measure. As Dr. Brian Williams, a trauma surgeon at Parkland Memorial Hospital in Dallas, noted in the wake of the deaths of five Dallas police at the hands of a lone gunman last month, "[W]e are all in this together, we are all connected. All this violence, all this hatred, all these disagreements, it impacts us all, whether you realize it or not . . . Something has to be done."[59]

Conclusion

We can no longer go to separate corners and place upon the public a false choice of either "black lives matter" or "blue lives matter." Instead, communities, law enforcement officials, lawmakers, and community leaders alike must admit our country's tainted past. They must admit that we have chosen to underinvest in schools, allow poverty to persist in communities, and refuse to fund drug treatment and mental health facilities. We must admit that the criminal justice system at every stage disproportionately impacts people of color. We must admit it is easier to get your hands on a gun than a book or a computer in certain neighborhoods. We must admit some law enforcement officers are wrong. We must admit law enforcement officers are rarely held accountable. Likewise, we must admit that many of the issues facing our communities are placed, sometimes unfairly, on the shoulders of police to fix. Truly moving forward and bridging the centuries-long divide between communities of color and law enforcement in the United States will require confronting the history and policy priorities put in place that helped perpetuate an unjust and discriminatory criminal justice system as a nation.

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