MADISON POLICE DEPARTMENT POLICY AND PROCEDURE REVIEW

Report to the City of Madison and the Madison Police Department Policy and Procedure Review Ad Hoc Committee

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Presented by:
Michael Gennaco
Stephen Connolly
Julie Ruhlin

OIR GROUP

323-821-0586
7142 Trask Avenue | Playa del Rey, CA 90293
OIRGroup.com

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FOREWORD

Opening Observations and Remarks

What follows below is the body of our Report, rife with observations about the Madison Police Department (MPD) and the greater Madison community, containing assessments of the core functions of MPD and offering recommendations designed to improve the organization. Because of the breadth of the assignment, the discussion is lengthy. And a number of the recommendations are necessarily wonky, technical, and delve "into the weeds" of policing science. However, before we dive in, we thought it important to provide our perspective on the circumstances that caused the project to be commissioned, and to offer our insights regarding what we saw and how MPD and its community might best move forward.

Unlike in most of the rest of the world, the policing function has remained a mostly local responsibility in America. As a result, each locality funds a police department that historically was given much discretion on how to carry out its public safety responsibilities. By and large, police department leadership was able to make decisions on hiring, policies, training, promotion, and accountability free from outside influence and direction. The result was that police culture became largely insular, instilling a sense that those who wore the uniform of the agency were best situated to decide how to police the jurisdiction.

More recently, a series of troubling events, particularly incidents involving police use of deadly force, have called into question that traditional paradigm. The national dialogue emanating from those incidents challenged the arrangement in

which the deployment of deadly force was evaluated solely by those within the criminal justice system or agency itself. The public clamored to know why deadly force incidents that on their face appeared troubling resulted in few prosecutions, fewer convictions, and no apparent accountability within the agency.

Community members pushed back when police leadership asserted that virtually all uses of deadly force by police "met Department and Constitutional standards" and declined to engage further about why the use of deadly force was believed necessary or appropriate. And the overlay of disparate racial impact as to who was being shot and killed by police necessarily created a racial component to the discussion and angst.

While much of this dialogue has left a sense of frustration, hopelessness, anomie, and lost trust among many, some community members and stakeholders have pushed to assert more influence on their respective police agencies. Communities that have rarely asked for a say on how police do their job are now asking hard question about use of force policies, and insisting that their police include concepts such as de-escalation, inherent bias, community policing, and preservation of life values as guiding principles. Other communities have moved to create outside police oversight as a way to learn more about their police department and achieve more influence on how their police conduct business. Still others have requested that police agencies provide more data and information about policies and police activity. Whether the overarching philosophy is one of "community engagement," "community influence," or "community control" of police, the days when police agencies were left largely on their own to create the rules and set policing strategies are likely to be largely behind us.

Much of the above dynamic and circumstance experienced nationally has also played out in Madison and continues to do so. Perhaps the first signs of the recent consternation and concern about MPD followed the fatal officer-involved shooting of Paul Heenan in 2012. As the community began to hear the details of the shooting, many were concerned that the articulated reasons for the shooting simply did not add up. However, the District Attorney found no basis for prosecution, and MPD found the use of deadly force to be in policy. Although MPD moved to terminate the involved officer for unrelated misconduct uncovered during the subsequent administrative review, the result nonetheless left many unsatisfied. Many continued to wonder whether the shooting needed to have happened – a sense of doubt that was only exacerbated when it was announced

that the City's insurance company had agreed to pay out over $2,000,000 to settle the related lawsuit.

That initial concern about MPD's use of deadly force was significantly amplified in 2015, after the fatal shooting of Tony Robinson. In that case, there was almost immediate questioning, frustration, and protest in connection with the shooting. Matters did not resolve when the District Attorney again declined to prosecute, and when MPD again found a controversial use of deadly force within policy. Concern only increased when it was learned that the officer in Mr. Robinson's case had been involved in another fatal shooting eight years earlier, for which he had received the Medal of Valor. After extended litigation, the City's insurer ultimately paid out over $3,000,000 to settle the resulting lawsuit by Mr. Robinson's family.

Concern over other officer-involved shootings and force incidents continued to roil the City as we moved forward with our review. The significant force incident involving Genele Laird was captured on video, and while the involved officers were again cleared by the District Attorney and MPD, large segments of the Madison community could not comprehend the reason for the force depicted on the video. And last year, parts of the Madison community expressed concern over the fatal shooting of Michael Schumacher, and wondered if the result could have been different had the involved officer waited for backup. Well into the year of our own study, a Madison jury awarded $7,000,000 in damages as a result of a 2014 fatal shooting of Ashley DiPiazza, finding fault with the involved officers' actions.

As with the national discussion, the heightened concern over officer-involved shootings in Madison was overlain with a broader concern about racial disparity. In 2013, a "Race to Equity" report shook the City's complacency when it showed broad differences over several metrics in African-American experiences in Madison, including large racial disparities in Dane County arrests. To its credit, the "wake-up call" provided by the report caused a number of initiatives to be launched to further study the phenomenon and devise solutions that continue to this day.

In large part because of the spate of officer-involved shootings and the racial disparity questions, stakeholders and community members became increasingly involved and interested in police issues. In addition to being the impetus behind commissioning this study, this increased interest prompted the Common Council to recommend significant modifications to MPD policy surrounding use of force.

Initially resistant to such input, MPD eventually agreed to implement the changes in policy earlier this year, a watershed moment establishing for the first time that outside stakeholders might have an important role to play in setting the rules for MPD officers.

With that recent history in mind, we began our work of holistically assessing MPD, well aware of, and interested in better understanding, the level of civic concern necessary for the commission of our study and the commitment of limited resources that it required. We soon learned of Madison and MPD's well-deserved reputation as pioneers in police science and as a cradle of progressive "problem-oriented policing" strategies as a result of icons like Professor Herman Goldstein and former Chief David Couper. We also learned of the reputation that MPD has achieved in the Midwest and nationally for its response to issues involving the mentally ill, and its impressive strides in recruitment, hiring and increasing gender diversity among its ranks. And we were soon informed of the specialized officer programs focusing on community policing initiatives.

We were also positively struck by consistent assertions about MPD's interest in changing officers' traditional approach to handling calls. In its pitch to the City for sufficient resources, MPD's literature indicates its goal that at least 50% of an officer's time should be devoted to engaging in problem-oriented policing. And the classroom instruction to officers at the Academy, as reinforced at in-service instruction, uniformly teaches personnel to perform their duties consistent with community policing principles.

This stated adherence to lofty principles is obviously commendable. However, there is a paucity of data about what officers are actually doing in the field. Many police agencies require officers to complete a daily activity log; MPD does not. Virtually all police agencies have formal performance evaluations requiring supervisors to assess officer activity; MPD does not. As a result, there is little current ability for MPD to learn to what degree any officer has integrated community policing strategies into his or her activity, and even less ability to incentivize officers to do so. Moreover, because MPD does not have much data regarding the daily activity of patrol officers, it is hard put to showcase its problem-oriented policing activity for the public. This dynamic and potential disconnect ties in to one of our overarching themes repeated throughout this report: the gap that sometimes exists within MPD between high ideals and everyday realities – "Is MPD the Department that they say they are?"

Beside the aforementioned incidents themselves, and their resonance in the larger debates in our country about law enforcement and criminal justice reform, an additional root cause of community concern in Madison is the way that MPD itself has responded. As detailed above, the City's insurer identified sufficient weaknesses with the Tony Robinson case to settle it on the eve of trial; it was the jury that found fault with the officers' conduct in the Ashley DiPiazza lawsuit. However, to this day, in none of the controversial force incidents has there been any official acknowledgment that MPD could have performed better, could have trained better, or could have devised better policy to guide its officers.

In our own experience of having assessed hundreds of officer-involved shootings, we have yet to review one in which no aspect of officer performance or decision-making could have been better or merited further attention, or for which additional training or guidance or reinforcement was not beneficial for the involved officers or the agency as a whole. And we have monitored a number of cases in which the force is best described as "lawful but awful," where the relatively lax Constitutional standard of legality may be met, but better decision-making by involved officers may have obviated the need to use force.

In contrast to the approach of many other leading agencies, the response of MPD has been to vigorously defend to the hilt each involved officer's decision to use deadly force, and speak to those who deign to ask questions with resentment, defensiveness, or even hostility. This is so even when officers and supervisors within MPD have expressed to us concerns about how a particular force incident went down. And even in cases in which MPD has internally found problems with police actions, it has refused to engage with the public, seek atonement, or simply listen to community concerns.

We know that it is important for police leadership to support officers. However, when that leadership is perceived to unremittingly defend officers to the point that any outside criticism is disregarded or worse, it erodes public trust. If community members ask hard questions and receive stiff-armed responses, it only furthers suspicions about the police and leadership's ability to hold them accountable. Engagement is easy when the police set the terms and discussion points; it is much more difficult – but ultimately more productive – when the hardest of issues are embraced collectively.

Unfortunately, we have also seen this defensiveness extend beyond a reluctance to be open about deadly force incidents. If a stakeholder questions the need for additional police resources over other resource demands, the immediate

assumption seems to be a bothersome lack of support for law enforcement. If a stakeholder declines to attend a Department graduation ceremony, that is immediately considered an overt sign of non-support. And if a community member expresses concern about an incident, he or she is too easily considered to be – and marginalized as being –"anti-police."

And it is fallacy to think that only those who wear a police uniform and tactical vest can legitimately voice opinions on police matters. Certainly, the expertise and training that every police officer carries with her or him are important qualities – but not to the exclusion of other legitimate perspectives. Until an agency fully values and embraces insight and criticism from all of its community, it will not be able to fully engage with that community.

We recognize that, at times, community members are so frustrated or emotionally wrought in advancing concerns about policing issues, that they do not articulate their feelings with perfect civility. The rage and discontent expressed by some can undoubtedly be hurtful and hard to hear, especially when it singles out particular officers. However, police leadership is best served by doing its utmost to keep the discourse at a respectful level, rather than responding in kind. Sometimes aggrieved persons are looking only to vent; it is incumbent upon police leadership to recognize this and receive the input dispassionately and with patience. The philosophy of "When they go low, we go high" can be easier to say than to embody. Still, keeping the channels of communication open, no matter how difficult, is a hallmark of effective policing leadership.

The past few years have been difficult ones for the Madison community and MPD, as both struggle with how most effectively to relate to one another. The impacted members of Madison's community and its police leadership could use a "reset" so that past disagreements and contretemps can stop getting in the way of a path forward. Our hope is that this Report will serve as a significant contribution to that process.

Report Overview

To study the Madison Police Department is to encounter a series of contradictions. There are, for example, residents of the City who appreciate and support local law enforcement with unusual energy, and others who just as fervently question or even distrust it. The Department's leadership is unmistakably devoted to Madison and is capable of genuine engagement and warmth – while also exhibiting flashes of frustration or resentment at inopportune moments. As for the MPD workforce, it is talented, accomplished, and diverse to an impressive extent. But some current members of the agency cite gaps, from their own experience or that of colleagues, between the Department' progressive messaging and its daily realities – in the field and within the organization.

The dynamic appears in other contexts as well. MPD's pride in its longstanding commitment to community policing exists alongside recent signs of drift from those principles and their benefits. And a largely progressive approach to training does not generally extend to the meaningful scrutiny of critical incidents, thereby leaving useful lessons unexplored.

Understanding and trying to reconcile these contradictions has been central to our efforts in the last year. As outsiders, we have also spent time placing the Department into the context of Madison as a whole. It is a city we have enjoyed visiting for many reasons, and one with a well-deserved reputation for spirited politics and community activism. But it, too, has contradictions that it has grappled with, to varying degrees of success: most prominently, the persistent elements of racial inequity. This backdrop – and the complex reasons for it – influences the Department in ways that must inform any comprehensive analysis, and we have tried to incorporate it into our findings and recommendations.

We begin by stating that MPD is far from "a Department in crisis," in spite of the controversy and turmoil that ultimately led to our project. Instead, as detailed below, we found much to admire and commend. There are areas in which MPD is unusually progressive, effective, and "ahead of the curve" when it comes to training and the evolution of best practices. Many of the Department's policies and organizational structures are solid and often innovative, and their efforts to

connect with all aspects of the public they serve are conscientious and often laudable.

It is, in short, an agency with many strengths. Madison is a safe and appealing place to live, and, in spite of the understandable attention that recent high-profile incidents have received, the Department's force use is limited in volume and primarily minor in nature. MPD has a justified pride in these accomplishments – and, ironically, therein lies the root of the contradictions that we perceived. That pride, in our view, can sometimes lapse into defensiveness and resistance when it comes to criticism. And when that happens, it can interfere with the kind of rigorous and formalized self-scrutiny that helps very good agencies become excellent ones, and helps excellent ones respond more effectively to the constant and shifting challenges of public safety.

In American policing, forward-thinking agencies commonly use formal "strategic plans" as a mechanism both to plan and measure their achievement of objectives. The concept of taking time and reflection to set future goals is important to any organization, but especially for the policing culture – which often and understandably lives in the moment, responding to unexpected crises while maintaining around-the-clock, wraparound public safety services. Yesterday's issues can often be forgotten as new challenges arise. Accordingly, unless there is a concerted effort to set aside time and resources to reflect and map out a future plan for the organization, goal-setting and future planning can fall to the wayside.

MPD has been operating without a strategic plan for a number of years. To its credit, the Department recognized this and had recently set wheels in motion to correct this, going so far as to tentatively select consultants to assist in devising a new strategic plan. As a result of the assignment provided to us to conduct an independent review of the Department, MPD decided to suspend that process until the findings and recommendations from this study could be digested and considered.

We appreciate that MPD had recognized the importance of devising a strategic plan and had moved to do so before this study was commissioned. To the degree that our recommendations identify issues that can help move the Department forward, we hope they will receive productive consideration as a new strategic plan is eventually developed.

We anticipate that MPD command staff would necessarily solicit input from its employees in developing the strategic plan, and would devise facilitation mechanisms so that all could be heard and participate. This is obviously a crucial

step. Beyond that, though, and consistent with the overarching principle that the Madison Police Department belongs to the people of Madison, it is also critical for MPD to seek input from other city stakeholders and the Madison community as the plan is developed. Consistent with a key recommendation of President Obama's Task Force on 21st Century Policing, MPD personnel assigned to the project should conduct extensive and varied outreach. The goal is to ensure that all Madisonians are able to readily contribute their perspective on what they hope the Madison Police Department will look like in future years, and can assist in developing aspirational goals. In short, because MPD belongs to all of its communities, it is critical for the Department to seek the input of all as it formalizes a vision for the future.

> RECOMMENDATION 1: In devising a strategic plan, MPD should consider the findings and recommendation in this report to the degree they suggest paths toward further improvement and seek input and assistance in its development from all MPD employees, city stakeholders, and the Madison community.

We greatly appreciate the hospitality, thoughtfulness, sincerity, and generosity of the hundreds of Madisionians, City personnel, and MPD members that we have met in the past year. Our hope is that this Report will reflect our esteem for the City and its police force in the most useful way: by providing an opportunity to reopen all dialogue channels and move all towards a common and extremely worthwhile purpose: improving policing in Madison.

Project Scope and Methodology

This Report is a step in a process that dates back to the fall of 2015. At that time, a group of 15 members of the public, representing a range of community perspectives, came together as the "Madison Police Department Policy and Procedure Review Ad Hoc Committee." Operating as an official part of City government, appointed by the Mayor, and supported by the infrastructure of City Hall, they began meeting on a public and monthly basis as a response to specific controversial incidents involving MPD.

While the Committee heard a number of presentations from inside and outside the Department about issues relating to policing, they also began to move gradually in the direction of commissioning a more formal study by an outside group. As

2016 progressed, the Ad Hoc Committee began a painstaking process of defining the scope of that study and working with Madison officials on the necessary mechanics. With input from interested members of the public who attended several of the meetings, the Committee eventually approved a proposal that amounted to a full-fledged review of MPD. The focal points were numerous, and covered both internal and external elements of the Department's functions, operations, and community relations.

Among the key topic areas were the following:

- Policy (with a special focus on use of force issues)
- Internal culture
- Administrative review mechanisms, including the complaint and discipline processes
- Racial inequity and disparity issues in the justice system and policing
- Community confidence
- Protocols for dealing with vulnerable populations, including the homeless and mentally ill
- Hiring, recruiting, and promotion
- Civilian oversight of the police

The proposal went out for responses in the summer of 2016, and interested firms submitted written materials for the Committee's evaluation. From there, the Committee selected three finalists, and set a date in October of 2016 for in-person presentations and questions at a public meeting.

As members of OIR Group, a California firm that specializes in the outside review of police practices, we were pleased to have been the choice of the Ad Hoc Committee, as ratified by the Common Council in November 2016. In keeping with the City's timeline, we began work on the study itself in late November. That work has continued throughout 2017.[1]

Consistent with the proposed plan for the study, we initially spent several months conducting research in a variety of ways. More recently, we refined our

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[1] We take this opportunity to acknowledge the especially valuable contributions of the following members of our team, and affiliated experts: Cynthia Hernandez, Howard Jordan, Professor Seth Stoughton of the University of South Carolina Law School, Dr. Eugene Paoline III of the University of Central Florida, Dr. Liesbeth Gerritsen of the Portland Police Bureau, data analyst Kevin C. Connolly, retired Chief Mike James of the Orange County (California) Sheriff's Department, Dr. Sam Walker of the University of Nebraska, and former colleague Walter Katz, now of the Office of the Mayor in Chicago, Illinois.

understanding of specific issues with an eye toward developing recommendations that might best advance the goals of the study: an evaluation of MPD's strengths and opportunities for growth, and a blueprint for enhancing the agency's commitments to best practices and progressive, responsive law enforcement. This Report is the culmination of our role in the process. From here, the Ad Hoc Committee will consider our findings and recommendations, and incorporate them into its own final outreach to the Common Council. We have also been informed that MPD, to its credit, will consider the adopted recommendations as it formulates its strategic plan.

Our approach to meeting the Committee's request for a comprehensive review has been multi-faceted – as called for within the proposal itself. Central to the task has been a series of site visits to Madison, where the "blank slate" created by our lack of previous familiarity worked as both an advantage and a challenge. Accordingly, we have relied on residents, community leaders, public officials, and Department members themselves in order to gain both background knowledge and a range of vital – and sometimes opposing – perspectives. All have been helpful. And we benefitted from the insights provided by the Ad Hoc Committee members themselves, who have continued to meet as a group throughout our process, and who have provided us with useful insights and references in both their personal and collective capacities.

As the original "request for proposals" from the Ad Hoc Committee had made clear, it was a priority to connect with people from across the spectrum of experiences and involvement with MPD. The four main categories were Department personnel, public officials connected to City and County government, community activists and leaders with a range of advocacy concerns, and private individuals who spoke as residents about the Department and its role in Madison. A listing of those voices can be found at the back of the report at Appendix A.

Frequently, the information and insights we received from individual people led us to additional sources over the course of the study. We appreciate the thoughtfulness, candor, and generosity of everyone who spent time with us and assisted our efforts.

Along with the interviews and meetings that comprised our visits to Madison, we also engaged in a wide-ranging review of documents that were provided by MPD and the City. These materials amounted to thousands of pages and covered myriad aspects of MPD operations. They included policy manuals, training curricula, and sample investigations from the Department's Internal Affairs cases

into allegations of officer misconduct. We reviewed case files from several officer-involved shootings to learn about the MPD process for investigating and evaluating such events. We read transcripts from civil court hearings relating to MPD incidents that had prompted lawsuits. We looked at samples of official incident and arrest reports, and documentation of uses of force by MPD officers. Additionally, we saw examples of background investigation files and other materials relating to recruiting, hiring, and promotion.

We further supplemented our research through a pair of surveys that we prepared and that sought direct feedback from two groups. One was intended for the general public, and we sent it out through the City's own website. It featured some 20 multiple choice questions about people's experience with and impressions of MPD and its operations. This garnered more than 2600 responses; the results are discussed below. The other survey, designed for us by Dr. Eugene Paoline III, a criminology professor at the University of Central Florida who specializes in police culture, was distributed among MPD personnel, with a specific emphasis on patrol officers, and was intended to provide insight into the Department's internal culture. Those results, too, are discussed in the body of this Report, and Dr. Paoline's final report will be available to the Department and the public.

Together, these and other documents – some of which were external to MPD but that touched on aspects of the Department's role in the city and the justice system – provided us with a foundation to assess the Department's inner workings in some detail, and to reach our ultimate findings and conclusions.

The information and insights we convey in this report would not have been possible without the cooperation of the countless MPD personnel with whom we interacted. In addition to their prompt and courteous attention to all of our requests for documents, case files, training materials, and other information, MPD representatives have been uniformly candid and helpful in answering questions and sharing their perspectives. Their generosity and graciousness consistently made for an easier and better process.

Throughout the year, of course, events relating to MPD have continued to transpire, and we have worked to incorporate evolving information into our own endeavors. We have followed the progress of a range of relevant bills in the Wisconsin legislature, for example, many of them proposed by local Representative Chris Taylor. We tracked the work of the Common Council sub-committee over several months at the start of 2017, which ultimately and directly

led to changes in MPD policy about the use of force; we discuss that process in more detail below. And we noted the number of homicides and "shots fired" incidents that continued through the summer, intensifying debate over the adequacy of MPD resources and the best approaches to public safety.

Given the dynamic nature of the issues covered in our study, and the level of civic engagement that we consistently observed in Madison, we assume that the quest for continuous improvement and the process of adaptation will continue well into the City's future. We will follow those developments with great interest.

EXECUTIVE SUMMARY

This Report culminates a year-long study of the Madison Police Department (MPD) by OIR Group.

The project that led to this Report emerged from a period of time that preceded our involvement and saw police issues – and controversies – at the forefront of local concern. In this respect, Madison was comparable to other jurisdictions and communities throughout the United States. A series of high profile incidents across the country, particularly involving deadly force and people of color, had reignited questions of police authority and accountability, with a special focus on the racial dimensions of these dynamics.

Madison's culture of civic concern and engagement lent itself inherently to an exploration of these topics, but there were elements specific to the City that provided additional impetus. One was the City's own controversial officer-involved shootings, including the shooting death of Tony Robinson in 2015. Another, of broader and longer-standing applicability, was the striking imbalance in racial equity that characterized the collective experience of Madison's African-Americans as well as other minority groups.

Our study ultimately produced 146 recommendations across six broad categories: community relations and engagement; response to critical incidents; use of force; internal culture and protocols; accountability; and civilian oversight.

Part One of our report focuses broadly on MPD and the Madison Community, with several main sections:

Racial Equity, Madison, and MPD

As outsiders to the City, we soon recognized that it is impossible to effectively assess MPD without first developing an understanding of Madison's history and current demographic realities. Madisonians are well aware of the troubling statistics that illustrate the disparate experience of life here for members of different racial and ethnic groups. We briefly discuss the 2013 "Race to Equity" report that provided a stark confirmation of persistent problems, and that prompted renewed – and often quite impressive – efforts throughout the City and Dane County to ameliorate the issues.

We acknowledge the willingness of Department management to support and facilitate endeavors that address these disparities, and identify related MPD accomplishments. At the same time, we also offer recommendations that emphasize the need for sustained attention to these longstanding realities.

MPD and Community Engagement

A law enforcement agency's "relationship" with the public it serves has many dimensions. We begin this section with a discussion of MPD's responsiveness to the nuances and distinctions that exist side by side within the "community" of greater Madison. In truth, like other metropolitan centers, Madison consists of multiple communities. Each has its own perceptions and priorities; the challenge for an effective law enforcement agency is to tailor its approach to the extent possible in meeting the diverse needs of its constituency.

Part of that process is acquiring useful sources of feedback. While MPD makes a number of outreach efforts that we note and commend, and while we recognize the wide and deep support that the Department enjoys among a majority of Madisonians, we also encourage approaches to address those barriers and resentments that do exist.

In this section, we talk about the specialized officer assignments that MPD has created and explain their roles. For Neighborhood Officers, we discuss how critical the selection process is for the ideals of the program to be achieved and suggest ways for more community involvement and feedback. With regard to Educational Resource Officers, while the greater Madison community debates the larger question of whether they should remain assigned to the schools, we offer

recommendations in selection, evaluation, and mission design intended to ensure that the best features of the program are advanced. Finally, we explain the role of the Mental Health Officers and suggest ways through more robust data collection and publication that their responsibilities may be better understood by the public.

Key additional recommendations in this section for MPD include:

- Making all of its policies available for public purview.
- Working with the City to analyze demographic data regarding arrests, citations, and use of force.
- Seeking feedback on performance from all of its community, including those most impacted by police activity.
- Fully implementing the Citizen Advisory Group concept.
- Conducting town halls or listening sessions following officer-involved shootings, significant allegations of misconduct, and other critical incidents.
- Allowing officers to appear in plain clothes at appropriate community meetings.
- Upgrading policy and practice regarding the provision of translation services.
- Making MPD facilities more accessible to the public.
- Fully implementing the recommendations of President Obama's Task Force on 21st Century Policing and the Dane County Community/Police Task Force.

Part Two of the Report is entitled "MPD Response to Critical Incidents." It includes the following main topics:

Criminal Investigations

This section discusses the changes to officer-involved shooting investigations since Wisconsin law requires fatal shootings to be conducted by an outside agency. The section addresses the need for MPD to change its policies so that it obtains interviews for officers involved in shootings the night of the incident, despite DCI protocols to the contrary. It also recommends that MPD amend its policies to ensure that involved officers and witnesses not view any video account of the incident prior to providing interviews. The section also notes the need for MPD to ensure that after an officer-involved shooting, the reasonable interests of affected family members are accommodated and suggests using the City's Rapid Response Team to liaison with the family after these tragic events.

Administrative Investigation and Review Process

In the past, MPD has relied on the criminal investigation for virtually all of its fact collection. Because a more robust administrative review demands a fuller accounting of facts, we advocate for a more exhaustive administrative investigation, including at a minimum a re-interview of the involved and witness officers.

The agency's internal administrative review should be a much broader, holistic review, to include examination of tactical decision making prior to the use of deadly force; efficacy of supervision; effectiveness of radio communications; effectiveness and availability of appropriate equipment; whether current policy provided sufficient guidance to involved officers; sufficiency of current training to prepare officers for the circumstances presented; post-incident decision making, including how effectively the on-scene officers transitioned to rescue mode and provided first aid; and effectiveness of communication with the family of injured individuals regarding notification and any requests for access to the hospital.

We propose a complete overhaul of the way in which the Department conducts its administrative reviews.

We also advance a similar review process after any critical incident that results in significant liability in order to identify officer or MPD performance that resulted in the exposure and development of a public corrective action plan designed to reduce the likelihood of future conduct and liability.

Part Three of the Report is entitled "Use of Force." Our discussion begins with an emphasis on the need to eliminate uses of force that may be legally defensible but avoidable. To do so requires a law enforcement agency to go beyond simply evaluating whether officers' actions met Constitutional standards and closely review its officers' uses of force and to evaluate whether those incidents involved interactions prior to the force that could and should have been handled differently by the officers. Consistent with this viewpoint, our review of MPD's use of force policies and practices included an assessment of the way in which the Department investigates and evaluates officers' uses of force, a look at the Department's force training as well as the way it gathers and utilizes data on uses of force, and an appraisal of its force policies.

We recommend a number of changes to the way the Department investigates and reviews uses of force, including processes to ensure that important questions are

answered each time an officer uses force. These include the following: Was there a reasonable opportunity to safely de-escalate the incident in order to lessen the likelihood of the need to use force or to reduce the level of force necessary? Was the force used reasonable when compared to the threat posed and all other surrounding circumstances? Once the use of force commenced, was it reasonably decreased or stopped as the level of resistance/threat/harm decreased or stopped?

We also propose changes to a number of specific MPD policies regarding use of deadly and non-deadly force, including provisions governing shooting at moving vehicles and the use of Tasers, as well as broader policy objectives regarding tactical alternatives to force and a commitment to seeking the public's input on changes to MPD policy.

Part Four of the Report is entitled "MPD's Internal Culture and Protocols." It includes the following main topics:

MPD Culture

One of the tasks set forth in the original Ad Hoc Committee scope of work was an exploration of MPD's internal culture – the attitudes and experiences of working officers and the outlook that they bring to their role in the City's life.

We note the Department's justifiable pride in the caliber and diversity of its workforce. Based in part on its own concerted efforts, the Department has enjoyed enviable success in recruiting officers who are typically underrepresented in law enforcement – with particular achievement regarding women.

Nonetheless, the question "Are we who we say we are?" is a recurring one among some of the Department's members. From the extent of "real world" officer support for community policing, to areas of racial and ethnic acceptance, we learned of gaps between professed ideals and felt realities. And we make recommendations as to how the Department might continue its efforts to confront issues of bias and marginalization within its ranks, and to take better advantage of the unique talents and perspectives of all officers.

MPD Protocols

In this section, we discuss a variety of separate aspects of the Department's internal operations that, for one reason or another, attracted our attention during the pendency of the review process. These include some features of life in MPD that we hope will receive renewed consideration, including contractually-driven "shift selections" and the longstanding blending of sergeant-level supervisors with

line-level officers in the same Association. We also encourage the Department to reinstitute annual performance evaluations of all employees, in an effort to enhance accountability and measure the degree of adherence to the Department's stated values.

Among our recommendations in this section are the following:

- Changing MPD policy to ensure that all recognize they have the Constitutional right to decline requests by police to search their home or vehicle.
- Instituting scenario-based training between MPD and dispatchers on how best to handle calls involving persons in mental health crisis.

MPD Hiring and Training

As discussed above, we give high marks to MPD's efforts at hiring officers with a diverse range of backgrounds and life experiences. We also propose an increased level of public involvement in the promotional process for officers.

We were impressed with the Department's training programs, both at the Academy level for newly-hired recruits, as well as ongoing in-service training for all officers. But we recommend that MPD continue to explore ways to train its supervisors, including the use of outside leadership training programs.

As part of our recommendations for this section, we suggest the following for MPD:

- Integrating a two-week period into the Academy program where recruits engage with Madison's diverse community in a non-police work function.
- In determining training areas for its police officers, soliciting views of the Madison community.
- Continuing to examine training protocols throughout the country.

Part Five of the Report is entitled "Accountability." It includes the following main topics:

Administrative Discipline

Law enforcement's ability to address allegations of misconduct through legitimate investigations and appropriate outcomes is critical to police operations and public confidence. With those precepts in mind, we discuss the mechanics of MPD's "Professional Standards and Internal Affairs" unit. We urge a more stringent

initial assessment of complaints, before they are labelled as "Conduct Reviews" with less formal investigative protocols and – importantly – attendant caps on the consequence for a sustained complaint.

In our review of founded discipline cases reported by MPD, we noted that a very small percentage of them were initiated by the public. We also found that MPD's sanctions for proven misconduct are lower than we are accustomed to, even for some more serious offenses involving integrity and force. We also noted the tendency of MPD to "settle" serious suspension cases by holding most or all of the days "in abeyance," which removes punitive consequences to the employee absent future policy violations.

Accordingly, we make recommendations urging reconsideration of current approaches, along with some mechanical suggestions about intake of complaints, other investigative elements, and options for increased transparency in public reporting. We also encourage MPD to assess the viability of a mediation program that could provide a vehicle for both complainants and the Department to exchange viewpoints and ideas, ideally for the benefit of both sides.

Specific recommendations relating to MPD's discipline process include the following:

- Making complaint and commendation forms accessible to the public at MPD police facilities.
- Changing policy so that MPD accepts and investigates all complaints that allege violations of policy, regardless of when received.
- Ensuring that violations of integrity are appropriately charged as such in the disciplinary process.
- Considering whether there is sufficient accountability in its disciplinary process regarding violations of integrity and force.

Audits, Reports, and Interventions

MPD has an impressive program for conducting regular audits across a range of potential operational and performance issues, from inventory of property and evidence to the monitoring of officer driving behavior to employee compliance with email policy.

Another PSIA project that we hope will soon come to fruition is the Department's proposed "Early Intervention System." The goal is to identify patterns of behavior that might otherwise fail to receive the proper collective attention and

administrative response. After a long pause as a result of database challenges and philosophical reasons, MPD has committed to joining the ranks of agencies who have invested in such systems. We encourage them to finalize plans and move forward as soon as possible.

Body-Worn Cameras

In the last few years, body-worn cameras have proliferated in law enforcement agencies around the country. Madison itself has given the issue careful consideration in recent years, having formed a sub-committee that narrowly voted against their adoption, only to renew proposals for a pilot project that would test the advantages and disadvantages in a real-world context. As for MPD, it has pronounced itself ready to cooperate fully with such a project, while falling short of advocating for it.

The "yes or no" question is a complex one – with supporters and detractors of law enforcement raising compelling arguments on both sides, and often finding themselves uncharacteristically aligned.

We have worked in recent years with agencies that represent each of the various approaches. In this Report, we stop short of advocating for one outcome or the other – partly out of sincere ambivalence as to whether the balance of clear advantages and clear disadvantages that we identify here lends itself to a definitive conclusion. Instead, we describe those elements in detail. And we focus on the process – urging the City and its stakeholders to be clear about what they want and expect from the program, and how those things might correspond to the inevitable limitations of the technology. Additionally, we strongly recommend a collaborative, transparent phase policy development. Lastly, and to assist in that development should the City at some point wish to move forward, we offer detailed suggestions as to the features that effective body-worn camera policies should have.

Part Six of the Report is entitled "Civilian Oversight: Public Engagement, Public Confidence." One of the overarching themes of the current national dialogue on policing issues is the call from segments of the public for a greater voice – particularly in issues relating to law enforcement accountability. We speak of the role of the Police and Fire Commission ("PFC") in appointing the Chief and recommend that future appointment cycles include more opportunity for community involvement.

We also recommend, as we do with all MPD personnel, that the Chief be evaluated at regular intervals by either the PFC or the Mayor (with input from Council), and that any evaluations that do not meet performance expectations be considered by the PFC as a basis for suspension or removal.

We also note the balky structure of how the PFC reviews complaints and offer suggestions designed to streamline that process, including outside investigations involving complaints against the Chief and command staff. We also note MPD's wariness about discipline cases being brought before the PFC for review and express concern about how that aversion may be having a deleterious effect on MPD accountability.

Most importantly, we recommend the creation of an overlay of civilian oversight that fills gaps beyond the PFC's statutory authorization. We suggest the appointment of an independent police auditor, reporting to an appointed community review board. The auditor would have full access to police materials so as to better perform other recommended functions: receiving complaints; reviewing internal investigations and uses of force in "real time," and participating in outcome decisions; conducting regular internal audits; making recommendations on policy; and providing public reporting. The community review board would commission assignments for the auditor, hold public meetings, and consider recommendations by the auditor.

PART ONE:
MPD AND THE MADISON COMMUNITY

SECTION ONE
Racial Equity, Madison, and MPD

As reflected in the scope of work for this project that the Ad Hoc Committee devised in 2016, issues of race and racial equity have been central to our study of policing in Madison. These issues also play a direct or indirect role in many of the resultant recommendations. Accordingly, those influences appear throughout this Report, and we refer back to the topic repeatedly in the context of specific subject areas such as community relations, restorative justice, the Academy, MPD data, and the role of Educational Resource Officers.

Here, though, we offer an introductory overview of our general impressions about this important subject. We begin by again citing our status as "outsiders." We were, of course, already deeply familiar with the racial tensions that have shaped attitudes toward American policing in recent years. And we also know from experience that those tensions manifest themselves differently, and to different extents, depending on demographic and historical realities that can vary greatly from jurisdiction to jurisdiction, if not neighborhood to neighborhood. That said, the dynamics in Madison constituted a backdrop that, for all its familiar component parts, was also quite unique.

The reasons for this are as familiar to locals as they have proven to be intractable. The initial disconnect we experienced, of course, stemmed from the surprising gap between the City's reputation for progressive ideals and its reality of persistent disadvantage for communities of color, which dates back decades. The 2013 "Race to Equity" report from the Wisconsin Council of Children & Families (with support from the Annie E. Casey Foundation) offered a dramatic modern quantification of it.[2]

The objective of the project was to "explore, measure, and analyze the extent and pattern of racial disparities on key well-being and outcome measures between African Americans and whites living in Dane County, Wisconsin". The resulting report collected relevant data in health, education, child welfare, and criminal justice.

The Race to Equity report found that Wisconsin has one of the highest rates of racial disparity in the nation across numerous domains, and that Dane County has one of the highest levels of disparity in Wisconsin. With specific regard to criminal justice issues, the Report found significant racial disparities in juvenile and adult arrests and incarceration rates. When the Report was issued, it unsettled the Dane County community that had taken pride in its progressive approaches to diversity. The stark numbers presented by the Report presented a "reality check" to that narrative that led to significant introspection and a range of public and private initiatives.

We relied on the report and its findings to get a baseline understanding of the statistical realities, and the renewed calls for reform that it prompted.

More anecdotally, we heard repeated references to the "tale of two cities" within Madison, and to personal episodes of discrimination as recounted to us by people we met. We came to recognize the paradox of municipal good intentions and considerable achievements that at times become obstacles – a basis for complacency and resistance to further engagement. And, most importantly for

[2] The report discussed Dane County as a whole, with a particular emphasis on African-American residents – approximately half of whom live in Madison. While noting the relative population and disparity impacts as being a basis for its focus on the black community, the authors of the report acknowledged the comparable challenges and gaps experienced by other minority groups in the area, including Latinx, Asians, and Native Americans. These groups have their own distinctive realities as well – and we worked to familiarize ourselves with these nuances.

our purposes, we tried to understand the role and effectiveness of the Madison Police Department against this backdrop.

Our impression from speaking with MPD personnel is that the Department is aware of the concerns and of the statistical measures that reflect and fuel them. The most prominent of these from the law enforcement perspective is the disproportionate number of arrests involving blacks, relative to their 7% representation in the City's population. For decades, records have shown consistently that blacks are several times more likely to be arrested than whites, with the Department's 2016 data showing that 43% of all arrests in the City last year involved African-American subjects.[3] However, as Department members are quick to point out, the City and Dane County track a number of indicators (such as poverty, income rates and educational outcomes) that show comparable levels of inequality.

These other sociological factors extend far beyond the scope of police control. However, in another sense they relate directly to the justice system, and in both directions: the sociological factors bear heavily on criminal activity, while the implications of arrest and its consequences contribute to the perpetuation of limited opportunity and disappointing achievement.

To its credit, the Department can cite a number of initiatives that show a genuine sensitivity to Madison's troubled history in this regard, a clear recognition of law enforcement's inherent influence, and a noteworthy interest in programs and approaches that seek to alleviate the inequities. These include internal measures such as diversity-driven recruitment that have produced tangible results. We are aware of numerous training programs on race, bias, and "cultural competence" that MPD offers for new recruits and veteran officers alike. And we were particularly impressed with the Department's "Racial Disparity Impact Committee," a group of committed MPD volunteers who have worked in recent years – with support from the command staff – to address the problems from different and complementary directions.

Externally, the Department has several relevant programs as well. It has a legacy as one of the pioneer agencies in community and "problem-oriented" policing

[3] A recommendation discussed below is to have MPD (and, in the future, the proposed independent auditor) not only continue to share such data but also to conduct trend analysis in pursuit of progress toward alleviating these gaps.

concepts that are intended to be proactive and service-oriented, with an emphasis on recognizing the unique character of individual neighborhoods within the larger city, and the distinctive challenges they might face. Its Neighborhood Officers and Community Policing Teams are the descendants of concepts that date back to the 1980's, and have accomplished constructive things. We also found the Department's commitment to restorative justice concepts to be progressive in philosophy and impressive in its achievements to date. MPD has played a leading and commendable role in promoting restorative justice in both the juvenile and adult offender contexts.

Still, room for growth certainly persists. Numerous voices within the Department, or with close connections to it, described differences between the ideals and thoughtful principles that MPD espouses and the reality on the ground, as experienced both by some residents – particularly in communities of color – and within the Department itself. The theme of "Are we who we say we are?" was a recurrent one in the conversations we had on this subject.

It should be noted that nearly all current Department members whom we met, even those whose own experiences had been disappointing or who spoke candidly about their frustrations, take the position that MPD is a progressive and forward-thinking organization in many ways. Officers are proud of the Department's unique culture, the depth and range of talent and experience within its ranks, and the good work that it does. To some, though, that made the occasional flaws all the more disconcerting. The disconnect also seemed to echo the larger dynamic in the City: MPD looks so good "on paper" in terms of its commitment to innovation and best practices that the deficiencies or gaps become harder to challenge and easier to ignore.

From our perspective, it was encouraging to note that the Department's internal critics remain hopeful and see the agency moving in the right general direction. This Report showcases some of the internal initiatives we found especially positive, and will encourage the Department to reinforce them in concrete ways.

Of course, for some factions within the City, the Department's best efforts still miss the mark – even when taken at face value. We met with community activists and organizers who assert that the justice system itself is fundamentally broken, and that the work of the police is inextricable from the structural racism that shaped it and continues to motivate it. Importantly, it is a point of view that

extends well beyond Madison's borders, and has animated ongoing activism – as well as pushback – at the national level. For their part, these local individuals are passionate and thoughtful, and to their credit many of them are directly engaged in programs that support and empower some of Madison's most vulnerable groups.

Some of these leaders take the position that nothing short of "community control of the police" would suffice to correct longstanding inequities. They speak of neighborhoods of color being "over-policed" in ways that have less to do with public safety than with discrimination, selective enforcement, and abuse of power. And, significantly for the Madison context, they dismiss cultural training initiatives and police outreach efforts as both superficial and beside the point.

This critique drives the rejection by some in Madison of the "community policing" model espoused by MPD and by progressive agencies throughout the country, and which we discuss extensively below. Instead of welcoming more "police/community engagement" and an increased emphasis on social work initiatives, proponents of this philosophy advocate a retraction of police presence, an increase in funding for social supports, and a model in which officers respond in a limited way to calls for service – as they do in other areas of the City.

Meanwhile, the argument goes, each dollar spent on law enforcement is part of the budget that cannot go to addressing the underlying issues that contribute to social instability. They advocate a more organic, democratic, and neighborhood-driven approach that would shift the power away from the institutional government and put it in the hands of those most affected by and aware of the neighborhood's needs and priorities. While falling short of full agreement, we find much worth considering in this perspective and the lack of trust that underscores it.

We learned about this approach in some different contexts, including direct conversation with prominent individuals who espouse it and several who question it, either on the basis of its underlying premises or the many challenges that implementation would pose. Respectfully, we have our own reservations about the current achievability of that vision in its purest form. We also take a more optimistic view of the present system and its potential for meaningful reform, even while acknowledging the sincerity and hard-earned frustration of the "community control" movement.

At the same time, we found that many of the activists' related insights resonate with some of our suggestions below for enhancing dialogue and affording a range of community members more influence over the police, its practices, and its accountability to the public. These include adjustments to current community policing models, more community involvement in Departmental decisions (policy, promotion, special assignment selection and evaluation), and the cultivation of local advisory groups and enhanced independent oversight of the Department.

Throughout this report, we advocate approaches that foster and benefit from recognition of Madison's diverse cultural perspectives and priorities. These extend beyond the African-American community, of course, though many of the imbalances we discuss above seem to be starkest there. We talked to representatives of the Hmong community who have worked to become full-fledged members of Madison civic life while seeking support for and accommodation of their cultural practices. We met with Latinx organizers regarding their sensitivity to the special concerns of undocumented immigrants, and their resulting hesitations about body-worn cameras and surveillance technology in a new political climate. Nor have we overlooked the useful input we received from other Madison residents who shared a different view. These individuals have their own sincere concerns about crime and safety and life in the City. In their experience, MPD is highly competent, consistently responsive, and greatly appreciated. This view obviously merits consideration as well, and we have tried to give it throughout the report.

Lastly, it is important to note that the black experience in Madison is far from monolithic. We were fortunate to meet with a range of African-Americans from different generations and with different connections to the City and its institutions. Understandably, they have different ideas about the nature of the difficulties in Madison and the solutions that are most attainable and worth pursuing. All of these ideas and opinions helped shape our findings and conclusions, and we note the care with which many black leaders told us of their respect for peers in the community and the benefits of shared commitment.

To varying degrees, there were encouraging signs within all these specific groups of rapport and effective communication with MPD representatives. But further

opportunities exist, as we discuss throughout the Report's body. And collaboration has been undermined at times by defensiveness, by people "talking past each other" in the aftermath of a controversial critical incident or other point of contention, or by shutting down when the questions suggest criticism or when change is not sufficiently swift or complete.

Department members for example, consistently chafe at allegations of overt racism or bias – and, in our view, they dispute them with sincerity and much justification. They speak of reacting to situations they did not create, and how their discretion in responding to some categories of crime (such as domestic violence) is limited. Apart from their intentions, though, is the reality of their work and its disparate impact on particular groups. The arrest numbers themselves and concepts such as implicit bias present challenges they must continue to grapple with. And they must also do a better job of understanding, acknowledging, and working through the trust and perception issues that are problematic in parts of the City.

We also urge Madison's many engaged residents – including those disaffected by their own experiences and concerns about the Department – to encourage further reform in constructive and collaborative ways. Negativity, contention, and distrust have their place. There are times, of course, when such reactions are unavoidable, and we acknowledge that Madison's recent history has been sincerely painful for individuals outside – and within – the Department. We have had the good fortune of meeting and learning from many of these same people in the past year. Almost universally, we have found their differences to be understandable and their goodwill to be unmistakable. We would accordingly be gratified if this Report provides an opportunity to reset the dialogue between them.

SECTION TWO
Internal Responses to Race and Equity Concerns

MPD has taken affirmative steps to play a role in addressing Madison's issues of inequality. This effort received new impetus and focus in the aftermath of President Obama's Task Force on 21st Century Policing, which produced a number of recommendations to which the Department formally responded. In part, that was an opportunity for the Department to showcase much of the work it has already accomplished along these important lines; we found the report that MPD produced to be a useful resource that featured impressive accomplishments and initiatives.[4]

During this same period, (and perhaps with additional motivation from the 2013 Dane County "Race to Equity" report), the Department took the further step of creating a "Racial Disparity Impact Committee" (RDIC). As set forth in its mission statement, its members sought to "undertake a thorough examination of existing departmental programs, initiatives and processes, explore opportunities to have a positive impact in reducing racial disparities in the criminal justice system and our community, and continuously strive to cultivate a culture of inclusion within our organization."

With the support of the executive command, and with a captain serving at its helm, the committee of volunteers from different ranks and branches of the Department formed sub-groups to approach the issue from several directions. These included the following:

- Training
- Internal Culture
- Policy and Procedure
- Restorative Justice/Alternatives to Incarceration
- Community Outreach

For the past two years, the RDIC served as the generator and coordinator for a number of efforts that spoke to equity issues in different ways. Directly, or in a supporting role, it contributed to effective initiatives MPD helped to advance. These range from small but constructive gestures (such as workplace cultural

[4] We also note at the end of this section where MPD has yet to fully implement the recommendations made by President Obama's Task Force.

exchanges within the Department) to broader protocol reforms. For example, concerned about having to bring individuals to jail for minor offenses because they lacked identification, when otherwise they would have been eligible for in-field citation and release, the Department began to work around the problem by taking their own photographs and using them to facilitate the process. The "policy and procedure" group also looked at parking citations to make sure that language barriers were not interfering with people's ability to understand and work through the process after getting a ticket; they helped institute a Spanish-language enhancement of the "Second Notice" paperwork that goes out.

A broader example was related to Madison's "Municipal Court Diversion Program," which began in 2015 and takes an innovative approach to addressing low-level criminal offenses committed by 12- to 16-year-olds.

The program provides an alternative to the traditional court system and affords participants the chance to resolve arrest incidents in positive ways – including community service, outreach to their victims, or other constructive means of repairing harm. Given the disproportionate representative of African-Americans who are cited for these offenses, the initiative has direct implications for the larger pattern of disparity in Madison.

The program begins with a referral from law enforcement in the aftermath of a violation; offenders have the opportunity to "opt in" and participate in the program before their arrest is officially entered into the system. Successful completion of individualized case plans ends the process, while accountability comes in the form of a return to standard court proceedings (and attendant records) for those who do not fulfill their obligations.

A variety of City, County, and private service providers have contributed to the infrastructure necessary to make this innovation a success. Early results have been favorable, with several hundred referrals occurring in the first fifteen months. The vast majority of juveniles who were given the chance to participate chose to do so, and the vast majority of participants completed their requirements.

MPD has played a central role in all of this, and stakeholders from different corners of the program are consistent about praising the Department's support and contributions. This year, the RDIC helped add to that support by focusing on secondary implications of retail theft cases, which comprise about a quarter of the total offenses that have been referred. Beyond the criminal process, Wisconsin

statute also allows for civil recovery – often with extra costs attached to the value of the theft itself. Many businesses make it a regular practice to pursue this option.

Recognizing that some of the benefits of the diversion were being vitiated by the financial burdens imposed by this civil remedy,[5] MPD also spearheaded a campaign that urged local retailers to forego their civil demands for those individuals who were enrolled in the new diversion program. A letter from the Chief himself, that explains the program and seeks voluntary cooperation, was a cornerstone of this additional outreach.

A second creative initiative, which MPD and the RDIC figured prominently in bringing about, were the series of "Unpaid Ticket Resolution Days" that were offered on a few spring weekends during 2016. This event gave individuals who had unpaid fines and forfeitures (because of traffic, parking, or other ordinance violations) the opportunity to address those issues through a negotiated arrangement – rather than having low-level legal issues exacerbate into serious obstacles through their inaction or inability to pay. The City Attorney's Office helped to facilitate payment plans, reductions, and/or alternate avenues of settlement. Again, as with features of the juvenile diversion program, a key premise was the recognition that these issues – while certainly requiring accountability and proper standards – were in reality placing a disproportionate burden on low-income violators.

The program proved to be extremely popular with the public, to the point where additional dates were added to accommodate more interested participants. We were impressed with both the apparent success and the organizational impetus that animated it. Designing and executing the "resolution days" required substantial work and collaboration. It was a credit to MPD and its partners in Madison, including the City Attorney's Office and the Municipal Court.

It is true that replicating it should probably be done with some caution – coordinating the entities was no small feat, and there is arguably a fine line

[5] For juveniles from low-income backgrounds, the ability to pay even small fines and fees is significantly compromised – which in turn triggers debt and other collateral consequences that can become impediments to individual progress. To the extent economic disadvantage correlates along racial lines in Madison, the dynamic has the effect of perpetuating the racial disparity problem. In other words, the totality of the "penalty" for the same misconduct is skewed, on average, against young people from communities of color.

between a constructive second chance and an avenue for people to take advantage. Still, we hope the Department will maintain its leadership role with this initiative and others like it. A firm organizational commitment to such projects, perhaps as part of its upcoming "strategic plan" process, would help ensure that the good intentions continue to translate into effective action.

> RECOMMENDATION 2: MPD should continue its active role in collaborative programs that address systemic inequity, like the "Unpaid Ticket Resolution Days," and set internal goals for accomplishing such events each year.

The Department's efforts at creative engagement with issues of inequity, including the RDIC's effective collaboration with partners in the justice system and the local community, are praiseworthy. They can, however, also be challenging to sustain, dependent as it is on personal initiative and volunteerism – and with impacts that can be hard to measure. The RDIC recently went on a hiatus of sorts, in recognition of some lost momentum and the potential value in re-assessing its structure. As it was explained to us by executive management, the thought is to combine some of the individual sub-committees in an effort to build synergy and efficiency in accomplishments.

This certainly makes sense. However, some of the individual members of the group that we subsequently met were unclear about the program's future and disappointed in the several month open-ended pause that has occurred. While we acknowledge the value of periodic re-evaluation and adjustment, we also hope the Department will continue to harness the creativity, sensitivity, and enthusiasm that the RDIC has brought to this important subject.

> RECOMMENDATION 3: MPD should commit to a re-energized Racial Disparity Impact Committee, and should provide both incentives for participation and continued organizational support for its efforts and specific initiatives.

Another internal response to inequity in the justice system and beyond is the Department's "Unconscious Bias Group," which has gone through different iterations since the first MPD officers began to explore the relevant issues in formal ways. Founding members trace the origins back to 2010, when a small cadre of officers – several of whom had personal insight into issues of societal bias – worked to create a training program that they could bring to their

colleagues. We spoke with some of these founding members, who sought a constructive response to a perceived need for internal growth within the Department itself. MPD's leadership showed a creditable willingness to work with the group. As early as 2011, and periodically since then, the group has spearheaded special in-service training on matters of tolerance, racial history in the United States, cultural competence, and dealing with bias.

The topic of bias is a fraught but critical one for peace officers; it speaks not only to disparate and potentially unfair outcomes, but also to the very intentions and culpability of the police themselves. Initial reactions of defensiveness and resentment in response to the subject are common, and not just among officers. But more recent research has advanced the conversation by framing the problem as partly a function of our inherent natures as opposed to our flawed characters. Studies in unconscious, unintentional, or "implicit" bias seek to promote first a recognition and acknowledgement of the reality, and then some techniques for mitigating it and lessening its influence on our lives.

MPD had begun to engage formally with the topic years earlier, developing a relationship in 2005 with a University of Wisconsin Psychology professor who has done research in the field. She conducted in-service training for MPD officer over the next year, introducing them to the concept of unintentional bias.

Bias became a focal point for MPD's working group of officers, whose membership – all voluntary – has evolved and changed over the years. Most prominently, the result has been the "Judgment Under the Radar" series of related presentations that date back to 2011 and continue being developed today. In fact, the team has expanded into the realm of community outreach with exemplary results. It partners with a number of other institutions and organizations (including, to cite just two examples, the State Bar of Wisconsin and the National Association of Social Workers), and has given training in a variety of public contexts – all of which has been well received.

Additionally, and in keeping with the group's origins, Judgment Under the Radar members have presented formal blocks to fellow officers during two different in-service training sessions, the most recent in 2015. This is a commitment from the command staff that is admirable on the one hand, but on the other is perhaps unequal to the subject's importance and complexity.

We respect the reality of limited discretion in training time, and the wide range of worthy topics that must compete for finite space in the officers' busy training schedules. Nonetheless, two observations seem worth sharing. One is that the subject matter of bias, its implications, and its remedies remains central to the evolving state of police-community relations. The other is that MPD, while a healthy and progressive agency in numerous ways, is not immune from pitfalls of bias[6] – and is not "cured" on the basis of work that has already been accomplished.[7]

While consistently respectful of MPD's leadership, and careful to emphasize the appreciation for the support and opportunities they have been given, the team members (both past and current) that we met acknowledged that the "grassroots" nature of their movement has been both an advantage and a limitation. There is room, as they see it, for more structural support from the Department, and more ways to promote involvement and engagement among their peers. We encourage MPD to find concrete ways to bolster the Judgment Under the Radar program and to maximize its internal and external impacts.

> RECOMMENDATION 4: Through resources and other forms of messaging, MPD management should enhance its structural and philosophical commitment to the Judgment Under the Radar program as a means of reinforcing its important work.
>
> RECOMMENDATION 5: Should future presentations by Judgment Under the Radar (or any other group) touching on bias be met with strongly negative reactions, MPD leadership should assess the underpinnings of the behavior.

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[6] Elsewhere in this Report, we talk further about Department culture, and about opportunities to enhance MPD's internal diversity and its external relationships with communities of color.

[7] In fact, we heard repeated references to the backlash against the 2015 training block that Judgment Under the Radar offered the Department. Not only did the subject matter seem to generate significant disagreement, but the reactions of fellow officers, and the harshness of the subsequent critiques, made a strong and disappointing impression on team members and their supporters.

CORE Team Programming

Another significant and beneficial response to the City's concerns about longstanding equity issues comes in the form of MPD's Community Outreach and Resource Education (CORE) Team, which launched in the summer of 2016 after significant planning and the acquisition of federal grant money. The team expanded in the summer 2017, and now has a sergeant and five assigned officers.

The CORE mission statement is clearly on point: *"to enhance the Madison Police Department's efforts to reduce disproportionate arrests related to racial disparities and improve trust and perception of fairness through procedural justice, community outreach, education and problem solving."* This resonates with the Department's direct emphasis on alleviating the conditions described in the 2013 Dane County "Race to Equity" report. And it also incorporates and relies upon the principles of community policing that we discuss above.

Strategically, the CORE Team has chosen to focus much of its direct programming on middle-school age students, particularly from traditionally disadvantaged communities. The underlying goal is to remove barriers and reset strained relationships. By sponsoring positive and worthwhile activities for recreation, education, and career development, the team offers young people a more affirming vision of law enforcement and its role. They see youth crime and recidivism as in part a result of narrowed life experience – a lack of awareness of, or exposure to, a broader range of educational interests and career options. Accordingly, they want to help their target audience recognize a different set of possibilities.

Some of their program content relates to problem-solving skills, and information about how and why the justice system functions as it does. Along with its "first-level" appeals as a beneficial resource for young people in Madison, the team hopes for ripple effects of good will and enhanced mutual understanding going forward.

By virtue of its role, and the attendant resource dedication, the CORE team has also become an MPD "clearing house" and facilitator for a variety of community outreach events. While they have become primary participants for many relevant programs – including ones that began before their own inception – they seek to involve as many Department members as possible in the work they do and

the ideas behind it. They serve as a resource for the individual districts in a variety of ways. In the summer, they take a lead role in the Black Youth Academy and the Latino Youth Academy – two week-long camp programs that date back several years and take place at the MPD training facility. While open to all young people, the camps are specifically directed at children from communities of color. About 30 participants attend each session.

Importantly, the CORE Team has also taken on the task of tracking community outreach activities MPD-wide, and keeping a database that can assist in measuring the resource dedication and initial results. Elsewhere, we discuss the importance of documenting the kinds of non-traditional and proactive engagement that helps advance the Department's law enforcement philosophy. While the CORE Team's initial efforts seem – understandably – to have been directed at simply collecting all the different activities into one place, the ultimate goal is to find more advanced ways of acquiring data that could help with analysis and evaluation.

We had the chance to meet with CORE Team officers on one of our visits. We found them to be earnest and enthusiastic about their mission, and optimistic about its potential to change dynamics of tension and inequity for the better. They also recognize the unique opportunity they have been given (in part because of the federal grant), against a backdrop of concern about crime trends in Madison and debates about staffing and deployment.

They also showed an awareness that effective public communication needs to be a priority. To the extent their efforts are dedicated toward relationship-building and improved connections with all segments of the Madison population, the group should continue its efforts to publicize events through social media and other avenues.[8]

While they share the basic view that their fellow officers support their endeavor, recognize its congruence with MPD's core philosophies, and are happy for chances to participate in CORE-sponsored events, they also know that "metrics" of success and influence are important. As a group with the resources necessary to measure achievements that are inherently intangible or indirect, the CORE

[8] One area of concern appears to be the City's web site, and the logistical challenges that seem to accompany efforts such as translation features that the group has sought in an effort to be more accessible. We recognize how easily civic technology departments can become overwhelmed by competing demands, but hope that some progress will occur soon.

Team should seek ways to assess the value of individual outreach initiatives, and drive adjustments throughout the Department as needed.

> RECOMMENDATION 6: The City should move apace to providing a translation function for its website so that MPD's information (as well as other City information) can be more facilely accessed and used by persons with limited English proficiency.

> RECOMMENDATION 7: The CORE Team should take advantage of its centralized role in sponsoring and monitoring MPD outreach, and should work to provide rigorous analysis of individual initiatives as to their relative impact and effectiveness.

As much as we regard the CORE Team and its infrastructure as a positive development, we also became aware during our study that smaller individual initiatives – and the flexibility to run with them – have long been an asset with regard to outreach and connection to individual communities within the City. One of these began in 2004, when MPD officers working in the South District began discussing ways in which they could give back to their community apart from their traditional policing responsibilities. Calling themselves "Amigos en Azul," these officers began planning various ways to provide outreach to Latino youth. Amigos' goal was to dissolve cultural barriers, build partnerships, and open lines of communication between the Latino community and MPD.

While participation has waxed and waned over the years, with new officers supporting and then replacing their predecessors, these volunteers have continued to have an impact. They were the original developers of the aforementioned Latino Youth Academy, for example, and have sponsored a number of social and learning events that tailor outreach to Latino and Latina young people. Perhaps most prominent is a soccer tournament that has expanded over the years and more recently has included a number of African-American participants.

During our review, we received positive feedback from participating MPD officers and community representatives regarding Amigos-initiated programs. One feature that was repeatedly emphasized was the recognition that the participating officers were developing the programs, soliciting sponsors, and devoting their time all as volunteers. While the grassroots nature of the group has

instilled a sense of genuineness to the programs, that aspect has also created challenges for the involved officers. For example, it may be difficult for officers to balance their work schedule with planned events. And we have been informed that sometimes there has been resentment when "beat integrity"[9] is interrupted by participating officers adjusting their schedules to attend such events.

The CORE Team may provide an answer to some of these challenges, provided the federal grant money that funds CORE continues. Its staff and focus are relevant advantages, and our understanding is it has teamed successfully with Amigos en Azul and other groups. But that support may not be sufficient; MPD should continue to evaluate whether other resources can be devoted to ensuring that Amigos' track record of commitment can be used to their fullest advantage without disturbing the spirit of volunteerism and caring that has fueled their efforts for over a decade. While programs naturally continue to evolve in response to changing needs, the positive energy that has characterized Amigos en Azul should continue to receive support within the MPD organizational plan.

> RECOMMENDATION 8: MPD should work to effectively support and incorporate officer-driven outreach efforts within specific communities, such as Amigos en Azul, into its larger community policing strategies.

Evidence-Based Analysis of Equity Issues

The Race to Equity Report continues to be an important frame of reference in Dane County regarding criminal justice issues as the national conversation about disparities in arrest and incarcerations has advanced. Nationally, President Obama's Task Force on 21st Century Policing recognized the importance of internal collection and promulgation of demographic data regarding police activity. As a core recommendation, the Task Force recommended that law enforcement agencies should "regularly post on their website information about stops, summonses, arrests, reported crime and other law enforcement data aggregated by demographics."

To its credit and in response to the President's Task Force recommendation, beginning in 2016, MPD began placing data regarding police activity on its

[9] Beat integrity refers to the filling of a particular shift with officers regularly assigned to the shift.

website, including demographic breakdowns, including criminal offenses, arrests, personnel demographics, and use of force data. In addition, except for use of force data, MPD's annual report publishes aggregate data broken down by demographics for the previous year.

While the collection and publication of this data are important steps, both informationally and as an example of increased transparency, we are not aware of any proactive internal or external analysis of the data. Soon, two years of data will be available for MPD police activity (including some metrics not measured by the Race to Equity Report), yet to our knowledge the Department has done no analysis of trend lines or a comparison to the Race to Equity Data.

The availability of the data presents an opportunity to learn whether any of the initiatives launched countywide or by MPD specifically has impacted disparity in any specific way. Moreover, because the data now collected and disseminated by MPD is so granular, statistical analysis could be undertaken to, for example, compare discretionary arrests to other types of arrests to see if there are significant differences in disparate impact or whether the margin holds true across all types of arrests. Regular and ongoing analysis of this data to gain further insight is an important next step that the Department should pursue.

> RECOMMENDATION 9: MPD and the City should discuss the most efficacious way to analyze the demographic data regularly being collected on arrests, summons, and use of force.

Full Implementation of Task Force on 21st Century Policing

As discussed above, and to its credit, MPD has considered the recommendations coming out of President Obama's Task Force on 21st Century Policing and used them as a jumping-off point for its own ongoing reforms. It compared them to the Department's current practices, and was able to showcase impressive achievements in a public report. Nonetheless, while many of the recommendations have been implemented to positive effect, others have not:

> 1.3.1 TASK FORCE ACTION ITEM: To embrace a culture of transparency, law enforcement agencies should make all department policies available for public review and regularly post

> on the department's website information about stops, summonses, arrests, reported crime, and other law enforcement data aggregated by demographics.

As indicated in its response and as discussed elsewhere, MPD does well in placing statistical information on its website about stops, summonses, arrests, reported crime, and personnel diversity. Moreover, while most of MPD's policies are available to the public, some of the Department's tactical policies have been kept from public purview. The apparent rationale is that providing such information might compromise MPD's safety or tactical position if potentially dangerous individuals became aware of the policies that guide Department members on how to respond to barricaded suspects or other challenges in the field.

With respect for the concern, we are aware of other agencies that have regularly publicized such policies, and not aware of any situations in which the concern articulated by MPD has been realized. MPD should revisit the potential risk versus the public's interest in full transparency in light of the Task Force's recommendation that *all* Department policies be made available for public review.

> RECOMMENDATION 10: MPD should consider implementing the 21st Century Policing Task Force's Action Item to make all department policies available for public review.

SECTION THREE
MPD & Restorative Justice Initiatives

One of the more impressive features of recent MPD efforts in the realm of community relations and innovation has been its active support of, and participation in, the various restorative justice initiatives in both the Dane County and Madison Municipal Court systems. We spoke to a number of Department members who have been involved in the process, and found their enthusiasm for it to be noteworthy and commendable. Just as tellingly, other stakeholders involved in the collaborative efforts were consistent in their high praise for MPD's leadership in this area – including individuals who expressed concern over other aspects of MPD's operations and community profile.

Within the last couple of years, MPD has had a growing involvement in restorative justice initiatives at both the juvenile and adult level. The principle behind this movement is very much in keeping with progressive thought about criminal justice reform, and speaks directly to the racial inequity realities that persist in Madison and elsewhere. Simply put, restorative justice recognizes that alternatives to traditional punitive sanctions are both more meaningful – for offenders and their victims alike – and less limiting of people's potential for positive development. Both of these benefits are important, especially in the context of the younger individuals that the programs serve. While not applicable in the same ways to more serious offenses, restorative programs have yielded impressive results in constructively addressing misdemeanor violations.[10] As one civilian participant in the program described it, the emphasis on "engagement over exclusion" as a response to problematic behavior marks a fundamental shift that is perhaps long overdue.

Madison's burgeoning programs have gotten off to their own successful starts. We discuss the juvenile version above in the context of the RDIC; for 17- to 25-year-olds and their victims, the Dane County Community Restorative Court, which launched in 2016 in the South District, has now expanded from its pilot status into a County-wide option, with MPD playing a significant supporting role in its early progress.

[10] Examples include disorderly conduct, simple battery, petty theft, and minor vandalism.

The young adult program begins with a referral in the aftermath of a criminal offense. If the case is eligible, the accused "respondent" is given the opportunity to participate: he or she must agree to accept responsibility and then to participate in and successfully complete a specifically tailored "restorative plan" designed to promote accountability through some form of volunteerism or restitution. Often, and quite interestingly, the victims themselves are willing and enthusiastic about being involved. At the end of the process, the fulfillment of the "repair harm" agreement effectively clears the record of the offender – thereby avoiding the collateral disadvantages and burdens that accompany a criminal history and can contribute to recidivism.

The initial scale in Dane County has been small (with some 25 offenders actively participating as of mid-2017). This is an understandable "growing pain," given the infrastructure requirements involved in training volunteers to serve as "Peacemakers" in facilitating communication, devising agreement plans, and monitoring progress. The District Attorney's Office also plays a key role in rendering individual incidents eligible, and has shown particular caution during these initial phases. But the model is a promising one, and we hope MPD will continue its prominent involvement.

We also note two cases from the early months of the program that received significant attention. Both involved females, still in their teens, who were arrested by MPD officers under widely publicized and controversial circumstances. In the first case, much attention revolved around the amount of force used by officers in taking the young woman into custody after an incident at a local mall. More recently, the program was used to resolve the arrest of a promising student who was arrested at her school after a cafeteria fight and initially faced serious charges.

Our understanding is that neither individual would have qualified for the Community Restorative Court based on its standard eligibility provisions. However, the program provides the District Attorney discretion to accept persons who otherwise might not qualify. Consistent with our underlying support of the program, we consider those decisions to have been very appropriate. There were, however, members of the criminal justice system we met who noted pointedly that the media attention and public scrutiny had apparently contributed to an outcome that was not available to many other similarly situated offenders.

While media and public interest is an understandable factor in official reaction, it should not have undue influence, or take precedence over other considerations. Ideally, the eligibility decision in special cases should be made based on a neutral evaluation of the circumstances behind the alleged offense and background of the arrested person. If the restorative justice system can be used successfully for high profile incidents, it suggests that the same opportunity should be provided for other potential participants. MPD should work with its criminal justice partners, including the District Attorney, the Public Defender, the Probation Department, and Juvenile Justice Department to further examine this issue to ensure that similar opportunities to enter the program are available to all.

> RECOMMENDATION 11: As part of its ongoing and constructive support of an innovative program, MPD should dialogue with its criminal justice partners to consider whether restorative justice programs available for controversial high media profile incidents can be made available for similar incidents that do not rise to the same level of media attention.

SECTION FOUR
MPD & Community Engagement

Interactions with the public that it serves, in contexts including but extending far beyond enforcement activity, are obviously a critical element of a police agency's work. In many ways, the nature and quality of those interactions can determine the extent which a given jurisdiction reflects Sir Robert Peel's famous pronouncement: "The police are the public, and the public are the police." And, increasingly, there is a national movement toward re-thinking the paradigms of the past several decades, and engaging the public more directly in shaping the mission and operational approaches of individual departments.[11]

Madison is well-suited for participation in this movement, and several different initiatives that we cite elsewhere in this Report (such as the Common Council's recent influence on the Department's updated use of force policy) are reflective of that approach's vitality and potential. Moreover, the Department has repeatedly stated a deep commitment to community outreach and effective collaboration. The Chief himself has been notably dedicated and energetic about representing the Department and actively participating in the life of the City.[12]

It should also be noted that the Department seems to be appreciated and held in high esteem by a significant percentage of Madisonians. We got this impression anecdotally from dozens of encounters with residents whom we met personally or who otherwise corresponded with us, and we attended multiple neighborhood events where the support for MPD was unmistakable. Additionally, we created a 22-question survey that was posted on the City's website, and which generated some 2700 online responses. Collectively, the replies generally corroborated our sense of the Department's favorable reputation – but also some reactions to questions about racial dynamics and use of force that were more mixed. To that extent, they reinforce our push for continuing reform and innovation.

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[11] For example, Professor Barry Friedman's "Policing Project," begun in 2015 at the NYU Law School, is a leading resource in helping to develop and apply principles of "democratic policing" in practical contexts. His group worked extensively with the City of Los Angeles in seeking public feedback about body-worn cameras in an effort to help shape the LAPD's new program.

[12] One reflection of this came when a list we requested of the Chief's public outreach activities ran for several single-spaced pages.

All surveys have their limitations, as we discuss below while encouraging MPD to broaden its own feedback mechanisms. There are realities of access, sample-size and participant motivation, and other factors that rightly limit their weight and influence. Nonetheless, and with those caveats, the results from those who did respond provided one way to gauge public sentiment across a range of topics. We will work with the City to make those results available in conjunction with the Report's release.

Other realities within Madison also deserve a mention when assessing "community engagement." One of these is that "the community" is a particularly complex entity here, filled with people from disparate backgrounds who have experienced the City in a range of ways and have a host of different perceptions and priorities. A few houses down from someone who is relieved to see a Madison squad car could easily be someone who fears or resents the intrusion that law enforcement represents to them. Assuming their shared sincerity and good will, their clashing perspectives exemplify a landscape that the Department must recognize and work to navigate effectively.

Given Madison's influx in recent decades of immigrants and people from distinctive cultural backgrounds, a sensitivity to ways those dynamics might affect police relations is also critical. For example, we appreciated the chance to meet representatives of the Hmong community in a few settings – and to gain some initial insight into the distinctive views held by different generations and genders.[13]

In our view, a commitment to genuine and multi-faceted feedback from all voices in Madison – even overtly critical ones – is central to this task. MPD deserves

[13]Among American states, Wisconsin has the third-highest number of Hmong residents, with approximately 4,000 currently living in Madison. This is, traditionally, a tight-knit community, many of whom came to the United States in waves during different phases of the Vietnam War and related conflicts in Southeast Asia after having supported the American war effort. Leaders from the non-profit "Wisconsin Hmong Association," headquartered in Dane County shared some of the fundamentals of their history in the Madison area: a high regard for and appreciation of the United States, as accompanied by a continuing commitment to their cultural and religious traditions. Part of this latter dynamic is often the desire to address their internal conflicts and problems without external – including governmental – involvement. They recognize the potential for tension with MPD in this approach, as well as the leeriness that many older Hmong residents feel about law enforcement from life in their native countries. Importantly, they are also quite interested in collaboration and dialogue, and would like to contribute to an evolution in which useful cultural awareness by MPD officers combines with ongoing (and partly generational) change to increase mutual confidence.

credit for the many ways it does indeed reach out to the public. We also talk at length below about the community policing initiatives that are deeply embedded in its history and current philosophy, and that are premised on the dual notions of relationship-building and grassroots feedback from individual neighborhoods.

However, we also see opportunities for further growth and new approaches. Based on discussions with residents from all walks of Madison – many of whom find much to admire in MPD's operations – as well as our own impressions, we have the sense that a potential flaw in the current model of engagement is the extent to which it is dictated by the Department. This is true in both form and content.

Form-wise, MPD does admirable work in organizing special events at its police facilities or at other community locations. We heard repeatedly, though, that MPD might benefit from participating in and supporting more events promoted by the community, rather than relying so heavily on initiating police events to which the public is then invited.

In terms of content, we were also told that MPD's willingness to "engage" tends to have significant boundaries, particularly when it comes to talking about difficult or controversial matters with its concerned communities. For example, when asked about recent officer-involved shootings, the standard response was reportedly that the matter was "under investigation" or after the investigation was over that it was "under litigation" or after the litigation was over that the officers' conduct was within policy.

When controversial incidents arise, "community listening sessions" are not typically organized to provide an outlet for resident's concerns or to offer such information and insight as is available.[14] Nor does the Department avail itself of opportunities to reach out when investigations are complete, and to give an accounting of its internal adjustments while gauging public sentiment.[15] For

[14] MPD policy states that with regard to significant officer-involved shootings, the Chief should provide a press conference or briefing within four hours but provides no further guidance about the matters to be covered in that public outreach.

[15] We did see examples from the Chief's blog, which is posted regularly on the MPD website, in which he wrote with great feeling and empathy in the immediate aftermath of the Robinson shooting in 2015, and at the conclusion of the investigative process for the East Towne Mall use of force in 2016. In other settings, however, the Chief's reactions to those same events often failed to connect with the communities most impacted, as many people conveyed to us during our visits

example, after one particularly controversial shooting where a decision of the officer to wait for backup was a source of controversy and concern, MPD changed its backup policy yet refused to concede that the change was influenced in any way by the shooting incident.

We were also told about similar – and also unsuccessful – efforts by community members to publicly engage Department representatives at the time of last year's "whiteboard" incident, which involved negative and disparaging comments that MPD officers had made about a park frequented by Madison's homeless population and that became known to the public.[16] Though the incident was investigated, responsible officers were identified, and internal remediation occurred, the effort of community members to engage and learn about the Department's response was rebuffed by MPD as an "internal matter" that was not going to be discussed.

This, to us, was a lost opportunity. Meeting on level ground with residents and potential critics – especially when the Department has not performed at its highest level – is undoubtedly a difficult thing. But the ability to acknowledge shortcomings, provide useful and even sensitive information, and listen openly to the negative feelings of those who feel outrage or disappointment, is also a potential source of connection and increased trust. Nor should frustration with Department's harshest critics preclude or impede outreach with other concerned segments of the public; in fact it is the responsibility of law enforcement leadership to continue to engage with all, no matter how fierce the criticism may be.

> RECOMMENDATION 12: MPD should continue to constructively engage with its community by increasing its emphasis on participating in community-initiated events.
>
> RECOMMENDATION 13: MPD should conduct town halls and listening sessions after all critical incidents, including officer-involved shootings as follows:

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to Madison. A common description we heard was of two parties "talking past each other" with different focal points of concern, and of a "defensiveness" and "unwillingness to engage" from MPD leadership that was disappointing.

[16] We discuss the incident itself in more detail below, in the context of MPD's Neighborhood Officer program.

- In the first few days subsequent to an incident, MPD should be empathetic to any resulting death or serious injury, explain the investigative and review process, and listen to any expressions of upset or concern.
- After the conclusion of the investigation, MPD should provide a public debriefing of the incident, highlighting any performance issues that were identified for improvement and reform.

RECOMMENDATION 14: MPD should seek to engage with its community regarding controversial events, including officer conduct that does not reflect its core values or best performance.

As for the externally generated events that it does attend – including some "town hall" or neighborhood association gatherings that we also watched in person – MPD personnel have invariably been in full uniform. Some residents have expressed to us their belief that the uniform creates unnecessary barriers with some community members, and inhibits their ability to engage positively with MPD. For this reason, there are local residents who have asked their assigned MPD neighborhood officers to attend community meetings out of uniform, only to be told that MPD rules and practice require them to wear a uniform whenever representing the Department.

We have heard a counter-argument: namely, that part of the very point of wearing the uniform in a congenial setting is to alter perceptions about the police as a hostile or dangerous presence. Still, that intended message does not always resonate: we met people who spoke sincerely about their issues with blurred lines and confusion over whether the officers were there as participants or to provide security. Some of these same voices have suggested that the officers themselves might be more comfortable with a less formal appearance.

We have encountered and worked with police personnel in a variety of settings and jurisdictions. In our experience, it is quite common for them to wear suits or even more casual attire, depending on the circumstance. Many of them have told us that the "soft clothes" do help them better relate to their community. The message, while perhaps a subtle one, can nonetheless be influential, and we encourage the Department to be flexible in considering it.

RECOMMENDATION 15: MPD should relax its uniform requirement permitting personnel to appear out of uniform on duty at appropriate community events.

Surveys and other Feedback

The idea of "customer outreach" is of course widespread in private industry; companies value it so much that they persist in asking for survey responses and even offer incentives for people to do so. Unfortunately, public entities have less of a tradition in this regard, but it is nonetheless an avenue worth exploring.

MPD has had a longer history than most law enforcement agencies in seeking this input in a myriad of ways. For example, it does its own online surveys for each patrol district's residents. We reviewed the recent results, which the Department commendably posts on its website in the interest of transparency. This strikes us as a worthwhile exercise and a relatively efficient way to solicit feedback; the questions themselves are also thoughtful and detailed, and there's a clear emphasis on urging respondents to focus on issues in their own neighborhood. This is connected to and consistent with the Department's recognition of the need for tailored analysis.

At the same time, MPD's leadership is quick to acknowledge that the process is certainly not scientific and less than conclusive. The 2016 South District survey, for instance, only generated about 150 responses. And, citywide, African-Americans and other minority groups have seemingly responded in smaller numbers than their percentage of the population. Efforts to address this have included different forms of direct outreach to solicit responses – including telephone calls and door-to-door visits in some cases. These ideas, and the awareness of the need for them, are a good start. But, as one District Captain put it during a conversation with us, there is a noticeable gap at times between some of the survey results and the reality that officers perceive in the street.

Bridging that gap and getting more complete data is a worthwhile goal.[17] There are a variety of new approaches to this that agencies around the country are

[17] President Obama's Task Force on 21st Century Policing recognizes this expressly: "Law enforcement agencies should track the level of trust in police by their communities just as they measure changes in crime. Annual community surveys, ideally standardized across jurisdictions

trying, and that might prove useful in Madison. For example, there are "text messaging-based" approaches that facilitate quick feedback from people who have just encountered the police in one context or another. A related initiative could take advantage of technology to automatically generate a short survey for individuals whose contact information is in a police report – as reporting parties, witnesses, victims, and even arrestees.[18]

In addition to endeavoring to seek feedback from a broader array of individuals in the Madison community, MPD should also target input from its criminal justice and social services partners. MPD officers regularly interact with prosecutors, jail supervisors, judges, public defenders, juvenile justice administrators, probation officers, and social workers. Because of those interactions, individuals in these other agencies have significant insight into the performance of individual officers and MPD as an organization. We learned how candid that feedback can be during our outreach visits as part of this review. However, none reported ever being solicited by MPD for their input or insight into individual officer performance or the Department as a whole. We urge MPD to outreach to these professionals to actively and regularly seek such feedback.

> RECOMMENDATION 16: MPD should devise additional ways to solicit and encourage feedback from all of its communities regarding the performance of the Department.
>
> RECOMMENDATION 17: MPD should devise a feedback loop for its criminal justice partners regarding the performance of its officers and the Department as a whole including the District Attorney, Sheriff, Judges, Public Defenders, Juvenile Justice Administrators, Probation Officers, and Social Workers.

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and with accepted sampling protocols, can measure how policing in that community affects public trust."

[18] Our understanding from former Chief Couper is that outreach to this latter group would echo a Departmental technique in the 1980's, when people who had been arrested would be contacted by supervisors within a few days of release to discuss their experience. Certainly, arrested parties are a "focus group" whose feedback would be a potential source of valuable insight.

Translation Services

For people who are not fully proficient in English, the effective use of police services becomes a daunting challenge – and potentially an additional barrier. Recognizing this, MPD has developed a standard operating procedure for assisting those who have limited English proficiency with a preference for MPD personnel to provide any necessary interpretation. We have been informed, however, that sometimes officers will call on family members or bystanders to translate, resulting in potential breaches of confidentiality, conflicts of interest, or inadequate interpretation. We have also been informed that social service providers will be requested to provide translation in a police matter, placing the social worker in a position of potential conflict with her or his client.

While expressly recognizing the potential conflicts, confidentiality concerns, or inadequacy of translation that may occur, current MPD policy permits the use of family, friends or bystanders to provide interpretation for informal, non-confrontational contexts when other Department resources are not available. "Informal, non-confrontational contexts" are not defined in the policy – a potential source of ambiguity that could undermine effectiveness in this sensitive issue.

We have also been informed that there have been times when MPD officers with some bilingual skills are reticent to provide translation services and that the various levels of proficiency create complications in defining which MPD personnel are qualified interpreters. The current policy notes that the creation of a list of authorized/qualified MPD officers as interpreters awaits a study of the operating cost of testing officers. We have also been informed that for years there has been consideration of creating a small pay differential for officers with language proficiency skills so that they can be incentivized to contribute their language skills to public/police encounters.

Finally, while the City has a telephonic translator service that is available to MPD, we have been informed that the service is not particularly helpful in dealing with police/civilian encounters, particularly in the field. It would be beneficial for MPD to collect more data on the use (or non-use) of the service so that it might be reimagined and improved upon.

RECOMMENDATION 18: MPD should revise policy discouraging the use of family, friends, or bystanders to serve as translators, except when MPD or City resources are not available and the situation is exigent. In cases in which civilians are used as translators, the non-availability of other MPD resources should be documented.

RECOMMENDATION 19: MPD should devise policy instructing its officers not to request social workers to provide translation services unless there is a pre-existing understanding with the social services agency that they agree to do so.

RECOMMENDATION 20: MPD should devise ways to incentivize its bilingual officers to assist in providing translation assistance in the field, including consideration of adopting a pay differential.

RECOMMENDATION 21: MPD should audit its officers' use of the City's telephonic translator program to gauge its level of effectiveness for police matters, and make suggestions for reform as needed.

Community Advisory Groups

Another way for the Department to cultivate constructive relationships and garner helpful input is through advisory groups. An example at the Dane County level that impressed us was the "Law Enforcement and Leaders of Color Collaboration" that formed in 2014, as facilitated by the United Way. It brought together representatives from the 23 individual police agencies in the County – including, of course, MPD – with a range of prominent figures from local churches and community groups. A number of people (both inside and outside MPD) credited the rapport they had established over a series of monthly meetings as being a significant asset in the effort to respond effectively to public concern and unrest after the Tony Robinson shooting case.

We also learned of MPD's tradition of reliance on an informal "kitchen cabinet" of community members, whose views are frequently solicited for input and advice

on numerous police initiatives and neighborhood developments. Our sense is that the current Chief has established many of these relationships himself, which is a positive sign and presumably a source of valuable insight.[19] Other Department leaders have also spoken to us about their own reliance on the ideas and perspectives of local experts, organizers, and influential residents of all backgrounds.

Recently, the concept of a neighborhood-based and "grass roots" resource was more formally pursued in the South District through the formulation of a Captain's Advisory Group. Pursuant to a federal grant, representatives of impacted communities of color were sought and asked to assist MPD in creating an advisory group for the district. We heard about the group in some detail, and were impressed with the philosophy behind it: namely, the recognition that there are individuals outside the Department who have knowledge, ideas, and peer credibility that are unique and potentially invaluable as an asset to the district – and that deference is accordingly due.

As of the time of this report, several meetings have been held to define roles and objectives; ideally the still-new program will have the further chance to develop, and will aid the Department in identifying priorities and strategies for best meeting the public safety needs of area residents. We further understand that another MPD district is also considering devising a similar group, and consider this welcome news. We applaud MPD's movement in this regard and advocate support and expansion of this concept.[20]

> RECOMMENDATION 22: MPD should continue to expand its efforts to create local Captain's Advisory Groups.

The Rapid Response Team

During the year-long course of our project, we were interested to observe the beginnings of an innovative new concept in Madison – the "Rapid Response

[19] However, our understanding is that when the Chief sought to create a more formal Advisory Group, he disbanded it after he learned of the relevant "public meeting" requirements.

[20] The movement is consistent with a recommendation from President Obama's Task Force on 21st Century Policing: "Law enforcement agencies should establish formal community/citizen advisory committees to assist in developing crime prevention strategies and agency policies as well as provide input on policing issues."

Team" developed by the Mayor's Office during the spring and summer in an effort to address violent crimes. In an attempt to better understand and more effectively address the shootings that occurred – and that were to some extent retaliatory or otherwise interrelated – the City looked for specific ways to alleviate root causes and harms, and to cultivate the kind of cooperation that could help with investigation and future prevention. It turned to a group of prominent leaders and organizers from the African-American community, and developed a concept in which designated private individuals – with supportive funding from the City – could become directly involved in the immediate response to violent crimes in the streets. At its core, the idea was to draw on the neighborhood credibility and personal insight of team members, and thereby to promote connections and strategies for constructively addressing each situation as needed.[21]

Our sense is that there were understandable growing pains at the outset, as the desire to move forward seemed to outpace the necessary planning and coordination. Obviously, one important stakeholder in this was the Department itself, as the law enforcement authority and the investigative agency that had its own priorities and protocols. But we heard more recently that persistence, adjustments, and communication gradually began to pay dividends. The City has identified effective contributors to the Team itself, and there have been positive individual experience that show the program's potential.

The City deserves credit for its effort in devising a more holistic response to major crimes, as does the MPD for working with the initiative. The program shows that such collaborations can assist with crime solving and prevention, while enhancing community trust and providing meaningful assistance to the victims of crime.

> RECOMMENDATION 23: MPD should continue to dialogue with the City's Rapid Response Team to further develop a productive working relationship, and to assist in the Team's overarching objective of enhancing trust and providing additional services to the community victimized by a major crime.

[21] This could include, for example, identifying and facilitating necessary services for those personally affected by the incident.

Dane County Task Force Recommendations

As mentioned briefly above, in 2014 a group of community leaders and police agencies formed what was named the NAACP/United Way Law Enforcement and Leaders of Color Collaboration Special Community/ Police Task Force, and in 2015 developed a number of recommendations for reform. As part of our assignment, we noted its impressive membership (a number of whom we have met), process, report, and recommendations. We were impressed with the thoughtfulness, research, and work that went into the initiative. This year, the group published a progress report from 14 of the 23 Dane County law enforcement agencies focusing on the status of each agency's implementation of those recommendations. MPD provided a summary response to each of the recommendations and reported that it by and large already had practices and policies in place responsive to them or had since adopted practices that addressed many of them.

While this is an encouraging start, several of the recommendations by the Community/Police Task Force have not yet been implemented by MPD. While our Report touches elsewhere on other subjects related to the Community/Police Task Force recommendations, we take this opportunity to comment on specific ideas that deserve further consideration by the Department.

Using In-Car Cameras to Audit Police Performance: As part of its recommendations regarding the use of cameras, the Community/Police Task Force recommended that Dane County law enforcement agencies with dashboard/squad car cameras should conduct random reviews of footage to evaluate officer performance. While, as discussed elsewhere, MPD does conduct some systemic audits, it does not to our knowledge regularly conduct random reviews of its dash videos to measure officer performance. The video footage provided by dash cam videos provides a resource whereby MPD could assess field activity about which it would not otherwise be aware. MPD should consider implementing this recommendation as part of its systemic audit program.

Deployment of Trauma-Informed Interviewing Skills: One recommendation that MPD indicated that it was still evaluating involved training officers and detectives in the use of trauma-informed interviewing skills.[22]

The development of trauma-informed interviewing skills was initiated by the International Association of Chiefs of Police with support from US Department of Justice's Office of Violence Against Women. The intent of the training was to "better equip law enforcement to understand the complexities of sexual assault through training centered on the neurological impact of trauma, the influence of societal myths and stereotypes, understanding perpetrator behavior, and conducting effective investigations." The rationale was that by viewing the incident through the lens of trauma, it would strengthen the quality of investigators' response to sexual assault survivors.

Sexual assault investigations are particularly challenging. The philosophy behind developing trauma-informed interviewing skills is consistent with the recent emphasis on the need to conduct these sensitive investigations in a way that minimizes any additional trauma on the victim that the investigation itself could unintentionally cause. The handling of sexual assault cases on college campuses has been a focus of national attention because of their unique challenges; the University of Wisconsin Police Department reported that its officers had recently been trained in the use of trauma-informed interviewing skills, and specifically pointed to the training it had recently provided in conjunction with the Rape Crisis Center on interviewing sexual assault survivors in sensitive/traumatic cases. MPD would be well-served to consult with its sister agency and, consistent with the Community/Police Task Force recommendation, adapt and provide similar training to its officers and detectives.

Examining Global De-Escalation Systems and Decision-Making Models: Recently, in part because of the increased dialogue and concern surrounding the use of deadly force by police, there has been greater interest in examining methods police use in other countries for de-escalating potential conflict, and in considering alternative frameworks through which police officers could view each call for service. Because police in Scotland are generally unarmed, for example,

[22] We note that during the fall 2017 in-service training, all officers received a block of training on Trauma-Informed Care presented by a representative from the Wisconsin Department of Health Services. This training was not specifically geared toward interviewing skills, but did introduce officers to some core principles about the widespread impact of trauma, how it affects individuals, and what officers can do to avoid re-traumatization.

American policing experts have been interested in how they are able to successfully engage persons and deal with any potential threats without having deadly force options immediately at hand. Under the urging of the Police Education Research Foundation, a delegation of police executives recently went to Scotland to hear first-hand about the techniques deployed to keep both the public and officers safe during civilian/police encounters.

Increased interest has also been devoted recently to a relatively new National Decision Model deployed in the United Kingdom. The Model is a risk assessment framework or decision-making process that trains officers to think about every police/civilian encounter as a series of stages:

- Identify Situation and Gather Information
- Assess Threats and Risks of the Situation
- Consider Powers, Policies, and other Obligations
- Identify Options and Consider Possible Contingencies
- Take Action (and Review what happened)

Using this model, officers are trained to ask themselves: "What should the public expect from me?" All stages of analysis are to be undertaken, with due consideration of the overarching Policing Mission Values, Risk, and Protecting Human Rights.

As one of its recommendations, the Special Community/Police Task Force requested that each police agency explore Scotland's de-escalation and the United Kingdom's national decision-making for police. At least one Police Department in Dane County has reported that its officers have been trained on the UK model. MPD's most recent progress report is silent with regard to any due consideration of this recommendation.

As we state elsewhere, it is in the best tradition of progressive policing that law enforcement agencies continue to explore how other communities handle the responsibility of public safety – including in other parts of the world. Of course, adaptation may well be necessary, considering the differences between a place like Scotland and urban America, especially with regard to the proliferation of civilian-owned firearms in the United States. But those differences are not a cause for dismissing how other international operations do public safety; instead, many police officials consider them a source of valuable new thinking. Given its

own proud tradition as a learning laboratory and reform agency, MPD should take the lead in implementing this recommendation.

> RECOMMENDATION 24: MPD should implement the Special Community/Police Task Force Recommendation to conduct random reviews of footage to evaluate officer performance.
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> RECOMMENDATION 25: MPD should implement the Special Community/Police Task Force Recommendation to train detectives and officers in the use of trauma-informed interviewing skills.
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> RECOMMENDATION 26: MPD should implement the Special Community/Police Task Force Recommendation to explore Scotland's de-escalation methods and the United Kingdom's national decision-making model for police, and adapt these concepts productively to its own policing challenges.
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> RECOMMENDATION 27: MPD should continue to consider and review the Special Community/Police Task Force Recommendations to further integrate them into MPD culture, and to embrace the spirit and underlying rationale with which they were made.

Treating Crime as a Public Health Problem

Recently, City leadership has begun to embrace a growing philosophical construct to view crime as being akin to disease as a danger to the public's health. This paradigm suggests a response to crime that goes beyond the traditional responses of detection and enforcement. Thinking of crime in this way necessarily enlarges the focus to include prevention and remediation as a more holistic response. While the crime as disease model underscores the importance of enlisting the support of other social service entities to shoulder responsibility in addressing the problem, it also teaches that policing should also enlarge its emphasis beyond detection and arrest.

To its credit, MPD leadership has long advocated a broader role for policing beyond the traditional model. It has also expressed support for partnering with Madison's social services networks and has already initiated relationships with them.

One commendable example that we became aware of during our study relates to the region's epidemic of opioid addiction and abuse. MPD has been a supportive participant in a Dane County initiative that emphasizes treatment over traditional criminal sanctions for individuals who overdose, and matches hospitalized subjects with recovery specialists. Equally impressive is MPD's support of a protocol that trains and equips patrol officers to administer Naloxone – an emergency antidote to the effects of overdose – as well as the officers' own willingness to participate and their numerous successful interventions to date. MPD's involvement in these endeavors places it at the forefront of contemporary responses to an increasingly challenging crisis.

However, there is further room for MPD leadership to ensure that the broader messaging from above in support of its collaborative approach to public health is consistently playing out in the field. Our Report offers strategies for MPD to evaluate the degree to which the message has been embedded into its culture, and ways to further incentivize and inculcate philosophic shifts. Because the precept of "crime as a danger to public health" provides a valuable holistic construct consistent with problem-solving policing, the precept should continue to be embraced and supported by the Department and incorporated into its way of doing business.

> RECOMMENDATION 28: MPD should continue to work with the City, County and its members to recognize crime as yet another danger to public health and to develop further strategies of prevention and remediation consistent with the model.

Selection and Assessment of Specialized Officers

Another potential source of valuable community input and insight is in the selection and ongoing evaluation of "Special Assignment" officers. As we describe in several other contexts in this Report, MPD has a coterie of specialized units and roles, including Community Policing Teams, Neighborhood Officers,

Educational Resource Officers, Mental Health Officers, and the CORE Team. These are considered "closed" positions, meaning they are not seniority based and that officers are selected based on a variety of factors in a competitive process.

It is our understanding that this often involves input of some kind from outside stakeholders and entities. For example, we are informed that School District Administrators are part of the selection process for resource officers, and the Department provided us with a lengthy list of other examples. This is, of course, an appropriate protocol. The viewpoint of knowledgeable individuals from outside the Department, who have some sort of connection to the type of work being done (such as a local neighborhood activist for the Neighborhood Officer assignments) can only add to the legitimacy and effectiveness of the ultimate choice. The MHO selection process offers a particularly apt example: The crisis workers at Journey have firsthand knowledge of specific officers with whom they have worked and, more broadly, of the types of traits and skillsets likely to make a successful MHO. Because so much of the MHO's job is to collaborate with service providers, MPD is wise to provide this avenue for input in the selection process.

While much good is happening in this area, our impression is also that, on the whole, outside involvement could be more formalized or robust. And we cite specific examples (as with EROs), where we recommend the Department reach out to additional facets of the community for feedback.

> RECOMMENDATION 29: Consistent with this Report, MPD should develop formal mechanisms whereby a broader group of community stakeholders are brought into the selection process for special assignment officers.

Once a special assignment officer begins his or her work in the unit, MPD should seek regular feedback and input from other stakeholders who could provide insight into the performance of the officer. For example, in evaluating the work of school resource officers, MPD should formally solicit feedback from school administrators, students, parents, faculty, and juvenile justice coordinators, prosecutors, and public defenders.[23] The same paradigm should be adopted for

[23] In a few places in the Report, most fully in Part Four below that MPD conduct formal performance evaluations of all of its employees. This recommendation, of course, also extends to specialized officers.

other specialized officers; e.g.; for Neighborhood Officers, feedback should be solicited from the Council member whose district is being served, as well as other residents of the neighborhood; in the case of Mental Health Officers, service providers and other professionals who come into regular contact with them should be asked for input. The feedback and input should be used to, as the case may be, further commend exemplary performance; identify, address, and remediate less desirable conduct; and serve as one measure through which to determine whether to retain the specialized officer in the assignment.

> RECOMMENDATION 30: Consistent with this Report, MPD should routinely seek input from community stakeholders and professionals regarding the performance of officers assigned to specialized units.

Mission Statement for Specialized Units

As noted elsewhere, some members of the community have questioned the value of MPD specialized units created to perform problem-oriented policing. Throughout the report, we offer recommendations designed to capture additional data about what tasks these specialized units are performing on a daily basis, and publicizing it to the community. In addition, it would be helpful for the specialized officers to devise a Mission Statement of each unit. We know that some, such as the Mental Health Team, have already done this, and the Department emphasizes mission and core values in a number of other ways. Nonetheless, we think it is a worthy exercise across the board. And because these units are in part intended to develop a special relationship with the community, the units should reach out to their public for input on the Mission Statement. Taking a step back to identify overarching goals for these units would be helpful internally to develop congruency of mission, as well as providing an encapsulation of those goals to the Madison community.

> RECOMMENDATION 31: With input from the community, each specialized MPD unit that has not already done so should devise a mission statement setting out the core objectives of the unit.

Proactive Release of Arrest Information

Another form of police and community interactions, and one with implications for public trust and confidence, is the Department's media engagement strategy. This is obviously a multi-faceted issue, and we appreciated the chance to meet with MPD's first civilian Public Information Officer, who brings to the job his own extensive professional background in local media.

With certain limited exceptions, police agencies have the ability to publicize arrests and provide basic information to the media and other about the identity of the arrestee, booking photo, and charges that formed the basis of the arrest. MPD proactively publicizes only a small percentage of arrests it makes through a press release or, even more rarely, a press conference. There is however, no apparent written policy or guidelines governing when to proactively release information about an arrest. Instead, our understanding is that MPD currently makes that decision on a case-by-case basis.

The decisions occasionally subject the Department to questions or criticism. The choice not to proactively publicize an off-duty arrest of an MPD officer was the subject of some controversy during our review period, for example. And MPD has also indicated that there have been times when student athletes have been arrested, and questions have been raised internally about whether those arrests should be proactively publicized. MPD has indicated that its philosophical approach has been that the notoriety or public prominence of the person arrested should not be considered in determining whether to proactively release arrest information, but that decision should be solely determined by the nature of the allegations that formed the basis of the arrest and the implications for public safety.

That philosophy is supportable; however, MPD should reduce its proactive arrest practice to policy. Such an exercise will provide notice to the Madison community regarding when arrests will be publicized and will better ensure a consistent approach internally. Because this policy has a direct public interest component to it, in developing the policy, MPD would be well-served to solicit public input as the policy is devised.

RECOMMENDATION 32: With community and City stakeholder input, MPD should devise a media release policy setting out objective parameters regarding when information about arrests of persons will be proactively publicly released.

Shots Fired Incidents

Another issue related to communications is the release of information relating to "shots fired" incidents. This past summer, MPD focused on publicizing reports of these events, most particularly in its daily "crime blotter" report. In addition, MPD has improved their data collection of these incidents; because these types of calls had not been separately categorized in the past, it made comparisons to earlier years impracticable.

"Shots fired" calls are unique in that "911" calls can be made on the slightest of information; a sound that the caller has interpreted as a possible gunshot. Moreover, by making the public more aware of these calls it may prompt more individuals to call when they hear a sound that may or not be the report of a firearm. Relatively unique among police calls for service, "shots fired" calls often have no corroboration than what the caller believed was a gun being fired.

Of course, it is important that when a person hears what may be gunfire that it is reported promptly to police. And the "shots fired" call should remain a priority for MPD. However, to provide further clarity on this issue, MPD should distinguish in its crime blog those cases that resulted in arrest, where corroboration was found (shell casings, bullet strikes), or where there was no ability to corroborate the call with physical evidence. This type of evidence-based information will better inform the public and provide both MPD and its public a better understanding of this activity.

RECOMMENDATION 33: In publishing information about "shots fired" calls, MPD should include whether the call led to an arrest, revealed corroborating information, or had no further corroboration beyond the initial call.

Making MPD Facilities More Accessible to the Public

We end this section of the Report by touching on one of the simplest and most direct aspects of an agency's community presence – its individual stations. In our numerous visits to MPD stations in the different Districts, we were surprised at how compressed the hours the hours of public access were for a police agency of its size. If a person who worked traditional hours wanted to visit any facility after work to talk to a station commander or ask a question, they would be hard pressed to do so because of the early closing hour. While MPD has explained that if a person wanted to report a crime or make a complaint, they could call and MPD personnel would be dispatched to the individual's residence, some persons would prefer to come to the station to talk with MPD rather than have a police response to their home.

We recognize that there are resource considerations if MPD's facilities were to be open for business in the evening hours. However, some agencies with which we have worked have creatively addressed this issue by staffing the lobby with volunteers or cadets in their Explorer program. It would behoove MPD to devise a way to keep its facilities open to the public for longer periods of time and consider creative use of these assets to do so.

> RECOMMENDATION 34: MPD should consider resource neutral ways to supplement the staffing of their facilities so that they can be open for public access for longer hours.

Increased Integration with the Madison Academic Community

Beginning in 1960, the University of Wisconsin Law School made a commitment to integrating research, teaching and outreach into the law school's overall program in criminal justice. As a result of a private grant from the Ford Foundation, Professor Herman Goldstein[24] joined the faculty and Wisconsin police agencies established internships for UW law students. As part of that program, four law students worked with MPD in 1970 on the development of policies that ultimately formed the core of the Department's policy manual. From

[24] Goldstein was instrumental in developing the Wisconsin Problem-Oriented Leadership Institute for Chief Executives, a two week in-residence program for Wisconsin police chiefs and sheriffs, and is considered the father of problem-oriented policing.

2005-13, this tradition of having law students integrated into law enforcement, including MPD, continued as a result of the acquisition of additional funding. Named the Hayes Police-Prosecution Project,[25] the program combined classroom instruction with internships throughout the state of Wisconsin. In addition to working on a policy manual, other law school interns assigned to MPD worked on projects such as a study of a creation of a municipal court, development of policy on use of deadly force, juvenile sex trafficking, homeless/police issues, and campus sexual assault. We heard anecdotally of one law student who identified a successful strategy that significantly reduced an outbreak of stolen textbooks on campus.

Unfortunately, the programs that brought Professor Goldstein to Madison and regularly inserted law students into MPD's culture diminished after 2013. While MPD has since that time regularly reached out to other graduate disciplines for research and training and regularly brings on undergraduate interns, MPD and the law school are less dynamically engaged. Moreover, the Department has failed to maximize the potential contributions of academic luminaries such as Professor Goldstein or past MPD leadership, as a means of further advancing principles of problem-oriented policing or otherwise providing an historical perspective to today's policing challenges. MPD is centered in an academic criminal justice community that was the cradle of progressive policing principles, yet is not currently capitalizing on its connection to these legends of policing or to the enthusiasm and energy of law students. We encourage MPD, the City, and the law school to find ways to close that gap.

> RECOMMENDATION 35: MPD should dialogue with the City and the University of Wisconsin Law School to identify ways that law students can be reintegrated into the Department's learning and problem-solving functions.

[25] Gary Prescott Hayes was a Wisconsin Law School graduate in the internship program who eventually served as the founding director for the Police Executive Research Forum. Part of the funding for the project came from the Hayes Scholarship Fund.

SECTION FIVE

Community Policing: Philosophy and Practice

A commitment to "community policing" is a cornerstone of the Department's philosophy – and MPD prides itself on its history of national leadership in this regard. Much of this originated during the 20-year tenure of Chief David Couper (1972-1992). Chief Couper's innovations, which included an assertive commitment to diversity in recruiting and hiring, continue to influence MPD a generation after his retirement, and we were happy to have the opportunity to meet with him and hear his insights. We learned firsthand of his vision to introduce a decentralized and neighborhood-oriented approach to patrol operations; this led, among other things, to the creation of individual district stations.

Chief Couper also worked closely with the nationally renowned, and aforementioned, criminologist Herman Goldstein. It was Professor Goldstein who developed the concept of "problem-oriented policing" that shaped MPD's approach in significant ways – and went on to achieve national attention and influence in both law enforcement and academia.[26]

"Community" and "Problem-Oriented" policing are concepts that overlap but that also have important distinctions – and there are times when both labels are used generically rather than in keeping with the original theories. Doing justice to the substance of them would require more space than we have a much lengthier report, but the MPD website offers a useful shorthand of the ideas and how they work together.

As the site puts it, the fundamental premise of the approach is that the police "foster trust by providing quality service(s) for all," and then use that trust as a basis for developing relationships with constituents that "facilitate cooperation and collaboration." From there, the stage is set for a progressive agency to engage successfully in a "problem-solving" paradigm: one that seeks to be proactive in identifying issues that matter to the community and that finds avenues to address them systemically and comprehensively, rather than on a reactive, case-by-case basis.

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[26] Professor Goldstein continues to hold emeritus status on the UW faculty, and we greatly enjoyed meeting him on one of our initial site visits. We take this opportunity to congratulate him on his recently receiving a prestigious honor: the 2018 Stockholm Award in Criminology.

Problem-oriented policing looks past mere "order-maintenance" in an effort to deploy resources productively and thoughtfully. Importantly, it also integrates community priorities and insights, and looks for ways to partner with other service providers in developing a multi-faceted approach.

As we discuss below, MPD leadership does continue to preach these principles as cornerstones of the MPD way. And we did find examples of concrete ways that the Department has preserved and built upon the Couper/Goldstein legacy. At the same time, we noted instances in which every day operational practice has drifted or stalled in relation to the original vision. As significantly, we found gaps regarding the ability of MPD itself to know to what extent leadership's "community policing" exhortations were being implemented in the field, as well as insufficient mechanisms to incentivize the approach. We also found several areas in which adjustments to current protocols – many of which involve seeking greater input from the affected communities themselves – would potentially enhance the good work being done.

Neighborhood Officers

The clearest example of MPD's structural commitment to community policing is its Neighborhood Officer program, which dates back in some form to the 1980's. Each patrol district has two to four of these officers, and the Department describes the role as follows:

> *MPD's neighborhood officers are assigned to specific areas of the City.*[27] *The neighborhoods are geographically small, and typically have a high need for police services.*
>
> *Neighborhood officers work full-time in their assigned neighborhoods. Rather than responding to calls for police service, they take a proactive approach to find long-term solutions to problems in their areas. Neighborhood officers are typically assigned to their areas for up to four years, and they become very familiar with their neighborhoods and residents.*

[27] Some Districts also have a "Neighborhood Resource Officer," who does the same kind of work in a more flexible, district-wide manner.

We spoke to a number of current and former neighborhood officers from different districts, as well as people outside the Department who have worked with them professionally or encountered them in their own neighborhoods. A few consistent themes emerged.

First, the "ideal" of neighborhood officers seems to be widely acknowledged as an approach that makes sense and that has tremendous positive potential. Done well, neighborhood officer assignments enhance not only police-community relations but also the well being of the neighborhood itself. The role works off of two key recognitions: that neighborhoods and their needs are distinctive, and that relationships born of individual officer engagement promote trust and constructive interventions.

The neighborhood officers in the Central District, for example, devote considerable time and energy to the homeless population in the downtown area – an issue less relevant in other locations. They deal with community organizers and city services that are dedicated to the issue, with business owners who are frustrated with the impacts of homeless activity on their own livelihoods, and with visitors and residents who express concerns or complaints in light of their own experiences. And they interact directly with the homeless people themselves. They know the stories, distinguish between those facing persistent homelessness and others who are simply loitering or seeking to engage in criminal behavior, and work to balance their compassion with their public safety responsibilities. We had the opportunity to meet – and go on a walking tour with – some of these officers, and quickly perceived their specific familiarity with the various individuals in the area.[28]

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[28] The thoughtfulness and commitment of the Central District officers we met was in obvious contrast to the "whiteboard incident" that generated controversy last year. In that case, a list of satirical "solutions" to the homelessness issues on State Street was posted on a wall board in a headquarters briefing room. Our understanding is that the list, which began as an earnest exercise in brainstorming during a challenging summer of encounters in a specific park, unfortunately devolved into several inappropriate suggestions that were written in jest but that showed a bothersome lack of sensitivity. When a photo of the board became public, it reflected poorly on the Department at a time of particular tension with parts of the Madison community.

The Department investigated the incident internally, and several officers stepped forward to acknowledge their role; they received minor corrective sanctions. We reviewed the case and believe that the matter was properly addressed internally – though, as we discuss above, there were missed opportunities for important public dialogue about the issue.

As for the "relationship" component of the Neighborhood Officer position, an experienced MPD officer offered us an illustrative example of how it might work:

> In a situation such as an officer encountering an area resident who was driving with a suspended license, it is useful for them to know and trust each other. Say the resident had just acquired and started a new job after months of struggle, for instance, and that a ticket or other punitive consequence would constitute a significant impediment; the officer's recognition of that could meaningfully inform his or her exercise of discretion. And, conversely, the resident's knowledge that the officer is aware of the underlying license problem – and expects it to be resolved – can provide motivation and accountability. The two can work out a suitable plan (such as a deadline for correcting the license) that both upholds legal obligations and supports a community member who is heading in the right direction.

The example goes to the heart of one of the tenets of community/problem-solving policing and relates back to our discussion about best use of an officer's discretion: citations and arrests are not the only tool a police officer has to address problems in the neighborhood.

The above descriptions speak to the second common theme of our review, which is that the individual officers are hugely significant in the effectiveness of the program. As with the Educational Resource Officers (another specialized assignment which we discuss below) not all officers are equally well-equipped for the unique responsibilities of the neighborhood positions. These include rapport building, the skilled and judicious exercise of discretion, and a clear and focused understanding of the unique "mission" that community policing entails. Finally, we have the sense that a certain amount of initiative and creativity are also of great potential importance. We were struck by how much latitude and autonomy the officers can have within their given districts – job features that are double-edged.

Overarching among the attributes suggested by the community was the need for Neighborhood Officers to gain and retain trust. If the Neighborhood Officers are seen as strictly another enforcement arm of MPD, some community members will be unwilling to engage. Some will already have suspicion that the Neighborhood

Officer has been inserted to gain "intelligence" of criminal activity in the neighborhood that will then be used by the agency to arrest residents for minor transgressions. The balance is tricky and relates back to the best use of an officer's discretion; citations and arrests are not the only tool a police officer has to address problems in the neighborhood.

Our understanding is that performance results over the years have varied. During our outreach, we were advised that some Neighborhood Officers regularly engage with neighborhood residents, informal neighborhood leaders, and elected representatives. Others do significantly less of this.[29] While some disparity is inevitable, it also suggests a few things in the way of recommendations.

The selection process, for example, is obviously significant. The current process is a competitive one, and does involve some community representation (though the particulars of that seem to vary). However, in order to develop immediate "buy-in" from both the neighborhood and the officer applicant, MPD should enlist the assistance of additional elected and informal representatives of the community to provide input. Moreover, as with other specialized officers performing community based policing, MPD should create a transition period so that incoming neighborhood officers can observe and model their work after high functioning neighborhood officers. Finally, as part of the continuing evaluation process, those neighborhood representatives should be contacted for input on the performance of the officer assigned to their neighborhood.

A third overall impression is that the neighborhood officers are, by and large, quite energetic and effective in the "positive relations" components of the position. MPD actually has several assignments with direct or indirect involvement in the sort of programs that make the Department a visible, accessible, and friendly presence. These can range from "coffee with a cop" information-sharing to more elaborate activities and outreach efforts. They can be educational, practical, or just social in the support they offer, and the Neighborhood Officers play a regular role in coordinating and participating in these events.

The intentions and impacts of these initiatives are, of course, benign. To some extent, they surely contribute to the communication and familiarity and trust that

[29] For example, we were told that one assigned Neighborhood Officer has yet to meet the neighborhood's elected representative.

is foundational for some of the other goals in community policing. We would accordingly encourage the Department to maintain these efforts – but not as a substitute for, or at the expense of, the sort of deeper engagement that particular neighborhood dynamics and challenges might require.

Reliance on neighborhood events as the sole or most significant form of outreach is, unfortunately, an easy pattern to slip into, even with the best of goals. In part, it is because a barbecue or similar endeavor is not only a straightforwardly good thing, and one that surely improves relations and perceptions on some level,[30] but is also far easier to quantify and achieve than the more ambiguous and open-ended "problem-solving" that should arise from that foundation. It was interesting to talk with a current officer who spoke about enjoying the various outreach events, while coupling that with a concern that those efforts were not having enough of an impact.

This relates to a fourth main takeaway, which is that the resources devoted to the Neighborhood Officer program (and other "special assignments" that are distinct from patrol) can be a source of internal tension as well as external pressure. Multiple sources shared with us the reality that the Neighborhood Officers' freedom from "chasing calls" and dealing directly with arrests and traditional enforcement can strain relations with the regular patrol force. The latter group often feels beleaguered by its workload and frustrated at perceived inequities, while some of the Neighborhood Officers resent how their work is devalued.

Additionally, as publicity about the reports of "shots fired" in Madison increased during the year of our study, there were questions about how resources were being deployed. Some in City government who were being pressed to fund more MPD patrol officers suggested moving special assignment officers into patrol, in order to have more personnel engaged in straightforward and traditional "law enforcement" functions.

MPD resisted this notion for reasons that on their face make sense to us. Some of these relate to an assertion of the uniquely "24-7" nature of MPD's service model. Others relate to the Department's longstanding stated commitment to the types of

[30] Not everyone agrees with this characterization. Indeed, we heard community members who either dismissed such events as peripheral to the core dynamics, or worse: some even went so far as to describe the social engagement as insidious, a way to promote trust that could then be exploited. We do not agree with this view, but found it important to hear and to understand – and hope that MPD will benefit from similar opportunities for communication and dialogue.

progressive and proactive initiatives that, at their best, the special assignment officers are especially able to accomplish.

The rub is that, other than anecdotal stories about Neighborhood Officers, there is little documented evidence to know to what degree and how well the neighborhood officers (as well as other specialized officers) are performing problem-solving functions as part of their daily responsibilities. Because they are not handling calls for service and regularly making arrests and issuing citations, neighborhood officers are freed from much of the traditional report writing of patrol. The result is that there is little contemporaneous documentation with which to gauge their activities and for MPD to learn to what degree the specialized officers are "doing what we say they are doing."

One remedy is to have the officers create documentation that would help MPD make, at first blush, internal assessments about the degree to which the stated objectives of problem-oriented policing have been internalized and are being carried out. A brief daily activity log prepared at the end of shift would memorialize the work of each Neighborhood Officer and provide MPD a body of work to make these assessments. Instead of relying on a sense or assumption that the Neighborhood Officers' work is efficacious, MPD would have "evidence" to better make that assessment.

Moreover, as noted elsewhere, MPD currently has no formal evaluative process for its police officers. This absence extends to specialized officers. In our view, yearly performance evaluations should be reinstituted, and devising metrics with with Neighborhood Officers' performance would be evaluated would assist in instilling concrete expectations of those officers. The daily activity logs and input from the community would perform the backbone of the evaluative process.

Earlier this year, and in response to requests from Common Council, MPD began to publish a daily activity log. Akin to the "crime blotter," the log focuses largely on MPD's response to calls for service and observed criminal activity. What is not included in this daily log is police activity such as problem solving, incidents of de-escalation, and other community-based policing initiatives.

The information within the crime blotter is clearly useful: it provides a direct summary of specific incidents and of the range of enforcement challenges faced by MPD officers. Inherently, though, it emphasizes traditional "crime fighting" over other desirous police responses. MPD's web site, social media outlets, and

other periodic publications do show officer activities across a broader range. However, a more concerted effort to capture and report out "community policing" efforts – by patrol officers or others – and the daily work of its special assignment units will provide a more robust and complete record of the work that is being done by MPD.[31]

The practice would have the added advantage of reinforcing to patrol officers that MPD values this dimension of their work, thereby incentivizing them to maintain a community policing orientation as they perform their duties. And for specialized officer assignments, this reporting would respond to understandable public interest about the nexus between those duties and enhanced public safety. Finally, the collection and reporting of this information could provide additional data points with which to better assess important questions about resource allocation.

> RECOMMENDATION 36: In selecting neighborhood officers, MPD should broaden its selection process to include City stakeholders and representatives of the community.
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> RECOMMENDATION 37: MPD should ensure an effective transition between the outgoing and newly-assigned neighborhood officers.
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> RECOMMENDATION 38: MPD should have its Neighborhood Officers (and all specialized officers) prepare daily activity logs of their performance.
>
> RECOMMENDATION 39: In order to be able to gain an evidenced-based understanding of patrol officers' problem-oriented policing activity, MPD should institute daily activity logs for patrol officers.
>
> RECOMMENDATION 40: MPD should develop evaluative metrics consistent with the stated mission of neighborhood officers and prepare at least annual performance evaluations based on those metrics.

[31] Below, we make a similar recommendation urging MPD to share information about incidents featuring successful officer de-escalation and other innovative solutions, even when they do not result in arrests or citations.

RECOMMENDATION 41: MPD should regularly seek input from City stakeholders and representatives of the community in evaluating the performance of its Neighborhood Officers on at least an annual basis.

RECOMMENDATION 42: MPD should devise ways to consistently publicize the community policing activities of its patrol officers as well as special assignment personnel.

Finally, the fifth key point from our observations relates to many of the others, which is that part of the shift away from the "pure" or "classic" model of problem-oriented policing undoubtedly stems from a simple reality: it is hard to do well. Indeed, the *work* of proactive diagnosis and systemic redress of neighborhood concerns can seem dauntingly difficult and abstract. It is the difference between rolling to a disturbance call in a notorious apartment building, and evaluating and trying to change the conditions that foster the volatility and tension that produces multiple calls to that same location. It's the difference between citing people for minor infractions in a park that has fallen into mainstream disuse, and trying to promote and facilitate more constructive activity in the same space.

In both of the examples, the first focus has its obvious importance. The latter, for all its greater impact, also faces the inherent challenges of complexity, uncertainty, and difficulty. It can require major investments of time and energy, with a payoff that can be hard to measure or even recognize. It might also best occur in conjunction with other entities, which brings its own potential obstacles.

One additional avenue worth exploring in this regard is heightened coordination with the City's broader Neighborhood Resource Teams. These groups are coordinated by the Mayor's Office and bring together City staff from a range of departments (including MPD). They are intended to identify and facilitate holistic approaches to quality of life improvements in specific Madison neighborhoods. It is a multi-disciplinary concept that very much aligns with the problem-oriented philosophy. Our sense is that the concept, while sound, could benefit from some reconsideration of roles and some renewed enthusiasm from across the range of City services.

RECOMMENDATION 43: MPD's executive leadership should pursue ways to utilize its neighborhood officers in developing, facilitating, and measuring specific problem-oriented policing projects.

RECOMMENDATION 44: MPD should commit to a newly robust and collaborative engagement with the City of Madison's Neighborhood Resource Teams in establishing new goals and performance measures for proactive problem solving.

Identification and Effective Use of Model Officers

MPD's leadership repeatedly espouses the priority that each of its officers conducts their responsibilities consistent with problem-oriented policing. That leadership has also pushed hard to increase MPD officer numbers, in part so that each has the time and ability to handle calls for service patiently and holistically. However, as discussed elsewhere, MPD has little infrastructure in data collection and performance measuring to learn to what degree each officer is handling his or her calls consistent with the messaging from the top. Accordingly, we offer suggestions on ways to better identify that metric.

Once MPD has identified officers that are best performing concepts of community policing, it should find ways to effectively export their talents to other Department members. Those officers should be identified as mentors, requested to teach community policing concepts at the Academy, serve as models during field training of new officers, and otherwise be used to incubate these norms throughout the Department. These ambassadors of problem oriented policing are the most effective front-line presence to growing these ideals within the organization.

RECOMMENDATION 45: With regard to field assignments MPD should find ways to take full advantage of officers identified as practicing problem-oriented policing, such as having them provide modeling opportunities, be involved in training community policing concepts and otherwise effectively export their policing strategies to other officers.

The MPD Community Policing Team

A group that is related to but distinct from the neighborhood officers is MPD's "Community Policing Teams" (CPT), which comprise some of the Department's longest-serving specialized units.[32] The team consists of officers who do not routinely respond to calls for service but instead are available to perform specialized functions at the discretion of the station Captain. They typically focus on specific geographical regions and address crime trends and particular issues that arise, while also contributing to community policing initiatives in various ways.

The role of the CPT officer can vary considerably throughout the districts. On the one hand, this flexibility is in keeping with the decentralized and neighborhood-specific elements of the philosophy, and often leads to endeavors very much in keeping with proactive policing.[33] On the other hand, it also lends itself readily to a drifting away from the pure principles of the model. Our understanding is that these officers are sometimes used for targeted enforcement activities, such as warrant service, traffic abatement, and prostitution enforcement, none of which could be construed as community policing in even the broadest sense.

While there is validity to these strategies, and while the idea of "directed enforcement" teams is widespread in law enforcement, we do have a concern about labels in light of the broader discussion above. The name "Community Policing Team" should not be used if much of the team's activity does not fit the classic definition. The point speaks in a broader way to appropriation of the term that has become commonplace throughout the country, and has the potential to confuse both MPD personnel and the community regarding roles and responsibilities.[34]

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[32] The recent version of concept was established in early 2004, but it dates back to the early 90's, when the emphasis was on targeted drug enforcement initiatives.

[33] A CPT officer in the South District, for example, had primary liaison responsibilities for MPD's involvement in Dane County's progressive "Restorative Justice" pilot program that launched successfully in 2016, and which we discuss elsewhere in Part One, Section Three.

[34] In our review of documents relating to the development of the current CPT model, we noted that the title mattered to the Department at that time, and that several proposed names were suggested and discussed – supporting the contention that the labels do matter.

Moreover, MPD should have its CPT officers prepare daily activity logs so that there is a better record of what these non-assigned officers are spending their time doing. In addition to being used to help gauge individual performance, such documentation will provide MPD and its community a more comprehensive understanding of what CPT officers are doing in the various districts.

> RECOMMENDATION 46: MPD should evaluate the substantive work of its individual Community Policing Teams, and consider changing the name of the team(s) as needed to better reflect their work.
>
> RECOMMENDATION 47: MPD should have the CPT officers prepare daily logs of their activity.

SECTION SIX
MPD's Educational Resource Officers

The Educational Resource Officer ("ERO") concept in Madison has attracted attention in the last couple of years as part of the larger local and national dialogue about policing issues. EROs are MPD officers on special assignment, one of whom works at each of the four Madison high schools. Funding for the positions comes in large part from the Madison Metropolitan School District, pursuant to a contract with the City that runs for three years at a time.

EROs have served in Madison schools for some 20 years. Until recently, contract renewals were relatively straightforward, but that changed prior to the 2016-17 school year. Supporters of the concept – which include MPD itself – found themselves challenged by contrary viewpoints about the implications of police in a school setting. These counter-arguments echoed the concerns and frustrations that a portion of the public had been expressing in a more general sense: namely, that the public safety benefits of a police presence were being outweighed – particularly for students of color – by problematic patterns in enforcement.

These issues included concerns about the "criminalizing" of disruptive juvenile behavior that could (and some argued, should) be better addressed through an administrative discipline process. Others pointed out the statistics that showed students of color being cited and arrested to a disproportionate extent, in a troubling reinforcement of citywide dynamics. Less concrete, but still noteworthy, were assertions that the presence of uniformed officers on campus was inherently unsettling for some students, whose personal or cultural backgrounds did not mesh with notions of the police as a reassuring, supportive influence.

Even among those who acknowledge the potential utility of officers on campus, some argue that those advantages could be achieved both more effectively and without the collateral concerns. This would be by taking the allocated resources and redistributing them to bring in social workers or similar support professionals.

MPD took exception to these characterizations and assertions. For all the talk about the danger of over-enforcement, it points out that violence (particularly in the form of fights between students that can escalate beyond simple shoving matches), truancy, drug issues, and even the occasional weapon on campus are documented realities in the Madison schools that a police presence can help

prevent and address. MPD also notes that at least some of these incidents would require a "911" call even if there were no officers assigned to the school, resulting in a more delayed response by a less familiar officer. Moreover, MPD claims to affirmatively recognize the unique needs and sensitivities of the high school population and environment, and our conversations with current EROs confirmed this.

Importantly, the Department also notes that the selection process for EROs is competitive, multi-faceted, and replete with officers whose very motivation is to work with young people in positive ways. To MPD, its officers are an asset to the school community in ways that extend far beyond enforcement and arrest activities. Indeed, at their best the EROs serve as a form of "neighborhood officer" in the best traditions of problem-oriented policing: developing constructive relationships, identifying potential issues, creating unique informal restorative justice programs within the school environment, and offering a resource that can help deter and prevent problems before they arise.

Though the public debate about the contract renewal in 2016 became contentious (to the point where details weren't finalized until after the school year began in the fall), some potentially positive responses emerged. These included the formation of two committees to explore the main issues and identify areas of possible reform.

One of these groups was "internal" and consisted of MPD personnel (including the current roster of EROs) and an equal number of school district officials (including representatives from each high school campus). This committee began to meet on a monthly basis in January of 2017, and both sides suggest that the collaboration has been helpful. The meetings provide an inherent backdrop for addressing issues of concern as they arise, and working to keep communication clear and effective. The other group was "external" and put together by the school board. It includes three board members (of the seven currently serving) and nine representatives from the Madison community. They have held periodic – and public – meetings as they gather input and move toward their own findings and recommendations regarding the ERO program.

Meanwhile, occasional high-profile incidents, such as a cafeteria fight occurring in March that led to the arrest of a 17-year-old girl on a felony child abuse charge, continue to showcase the divergent viewpoints. While some saw it as

representative of a volatile environment that needs the police for safety purposes, others portrayed it as an example of overreaction by the authorities, including the charging decision and resulting detention, of the sort that has a disproportionate impact on minority students. The latter group argues that, were the EROs not present, many individual incidents that result in arrest could and would be resolved administratively; the counter argument is that a presence "on-scene" keeps things from escalating, and that many episodes are in fact defused because of the availability of the EROs.

The divide reflects important dimensions of the larger re-consideration about law enforcement, its role, and its history. In short, the notion of a direct equivalence between police officers and "safety" is more complex for some groups than others.

Both sides make legitimate points – and reinforce the need for ongoing dialogue and a shared set of objectives. It was concerning, for example, to hear anecdotally about specific incidents (including a "weapon on campus" case) actually worsening because of a well-intentioned hesitancy to involve the police, and thereby blossoming into more serious problems. This is why the committee work discussed above is especially important; the hope here is that it will produce constructive outcomes and clear guidelines for the future. While the Madison School District, MPD, and the larger Madison community proceeds to debate these issues and decides whether and, if so, to what degree continual police presence in City high schools should continue, we have a number of recommendations so that the current program will better reflect the best ideals articulated above.

During our review, we had the aforementioned opportunity to meet with current and former MPD EROs, as well as representatives from the school district and the school board, and even some past and current students who had experience in dealing with EROs. While perspectives differed at the edges from time to time, there was also much overlap – and some key themes that resonated with our own work with "school police" issues in other jurisdictions.

Among these themes is the significance of each individual officer in determining whether the ERO program is living up to its potential as a constructive, student-centered element in the school environment. This makes obvious sense – with only one officer in each location, that person's approach and ability to establish

rapport has a significant influence. It also suggests a few important principles that both acknowledge and try to mitigate the reality of officer-specific variations: namely, that selection is of critical importance, and that efforts are made to "standardize" the role of the officer in an effort to promote core levels of consistency from site to site and officer to officer.

With regard to selection, the first and most obvious consideration is that some individual officers are better suited to the role than others. A genuine desire to work constructively with a student population, a recognition of the unique responsibilities and dynamics of policing in the school setting, and a facility for connecting with students while maintaining appropriate boundaries are qualities that people possess to different degrees. As with other "specialty assignments" within MPD, the process for choosing EROs is a competitive one, which we endorse. It seems to have produced a number of effective choices over the years.[35] However, we also offer a couple of concrete ideas in this arena.

One is that the Department finds ways to allow well-regarded officers to have the latitude to stay in the position beyond the established tenure of four years.[36] We understand – and discuss elsewhere – the pros and cons of the current rotational system for community based specialized units, recognizing that it provides an opportunity for more patrol officers to have a different experience, but finding that interest outweighed by the interest in retaining proven officers who have performed well. We also recognize the restrictions on MPD discretion that flow from the current labor agreement with the officers' association and that providing such flexibility will need to be negotiated in future contracts. However, because the demands of the ERO position are so unique, and the role of officers in the schools is a matter of such community sensitivity, it seems worth the necessary effort to extend the service of especially effective officers. This could be the function of a protocol that blends input from the officers, Department executives,

[35] During our review, a number of sources said that the question of whether it was helpful to have resource officers assigned to Madison schools depended almost entirely on the officer selected to perform that role. As an example, several of those observers referenced a former ERO who, during his tenure, focused heavily on problem-solving, role-modeling, and devising a restorative justice system in the high school until he was termed out.

[36] Under the current labor contract, the Chief is limited to extending any particular ERO a maximum of one additional year.

and site administrators and allows for a tenure that could be mutually agreed upon.

The other is to strengthen the current selection process by expanding the list of "front end" participants. We have been informed that school district administrators currently participate in the selection process. However, additional potential stakeholders could include faculty, student leaders[37], and persons responsible for managing the County's juvenile justice programs, who have significant involvement and knowledge about the work of EROs and who offered interesting insights to us regarding these questions.

As for mitigation of the inevitable gaps between one officer's performance and another's, we encourage efforts at developing training programs and feedback loops that will promote clear expectations and consistency in execution. Our understanding is that newly assigned officers have the chance to attend an external 40-hour training program that is specific to the role, and that the school district provides relevant in-service training at the outset of every academic year. However, while some informal "cross-training" and comparing of notes undoubtedly occurs between departing officers and their successors, it might be advisable for the Department to consider formalizing a short-term "field training" regimen that would help preserve and perpetuate position effectiveness. Providing a newly assigned ERO some time to shadow an ERO who has a track record of functioning well in the schools would provide an opportunity for the incoming officer to observe and model his or her approach accordingly.

Nor can – or should – MPD foster these performance standards by itself. On the contrary, the district itself has a critical role and responsibility in this regard. An MPD officer who had filled in as a "substitute" ERO before being selected to a full-time position described to us being struck by the differences in expectations and culture among the campuses based on the respective administrators. This perspective was echoed by other officers as well as interested parties from outside the Department. It seems clear that a change in the principal or assistant principal in a given location can have an outsized influence on how the program works, and the extent to which EROs focus their energies on traditional enforcement or more progressive and proactive interactions.

[37] Including the voice of student leaders would also provide those individuals a gateway into meaningful civic engagement.

While some of this is understandable and potentially benign, an overarching set of expectations and guidelines, as agreed upon by MPD, site administrators, district officials, and additional stakeholders, is also fundamentally important. The district, which also utilizes its own security personnel and "behavioral response teams" to deal with student issues, is in a strong position to coordinate and communicate these complimentary responsibilities so as to best effectuate the goals of student safety and wellness.

We further recommend additional building around the putatively shared priorities of problem-solving, de-escalation, and conflict resolution over traditional police responses. We're familiar with jurisdictions in which school police officers have worked with school administrators to develop a matrix of responses to common types of incident, so as to frame uniform expectations across the different sites. Our sense is that there is room for this kind of "district-wide" initiative in Madison. Common agreement should be reached to determine how best EROs should exercise their discretion in dealing with high school students regarding arrest, citation, and charging decisions and to recognize that high school incidents that can be handled outside of the criminal justice system should be.

It is also incumbent upon MPD to continue to assess whether the EROs are striking the desired balance between prevention, problem-oriented policing, and enforcement.[38] Because the ERO is not working out of a station but in an environment not regularly frequented by MPD supervision, it is incumbent upon the Department to regularly seek input from school stakeholders and juvenile justice partners on the performance of the EROs. We were informed that juvenile justice partners who have regular contact with EROs as a function of their responsibilities have never been solicited by MPD for such input. If, based on feedback and MPD's assessment, a particular ERO's performance begins to skew toward enforcement, MPD should intervene as appropriate.

Lastly, we encourage a furthering of the kind of communication and collaboration that has emerged in the last year. The internal working group has apparently helped to improve dynamics by getting together and discussing issues on a regular basis. It's a useful forum for addressing issues such as where police vehicles should be parked on campus, and whether a "soft uniform" – which we endorse –

[38] This is consistent with a recommendation from President Obama's Task Force on 21st Century Policing: "Law enforcement agencies and schools should establish memoranda of agreement for the placement of School Resource Officers that limit police involvement in student discipline."

makes sense in projecting the desired accessibility and positive presence of EROs. More steps in the area of public outreach, and coordination with the external group initiated by the school board, could also be advantageous.

One step in this direction is the current plan to expand on the annual reporting information provided by the District, which to date has provided only arrest and citation compiled from the different campuses. This is obviously relevant information, and useful in terms of identifying trends and developing potential remedial responses. However, to the extent that it does not capture or reflect some of the central aspects of EROs proactive policing in the schools' environment, MPD and the District should prioritize the preparation of a more holistic portrayal in this year's report. Such a step would have a few potential benefits. Not only might it add constructively to interested parties' objective understanding of the ERO dynamic, but it could also have a positive influence on the philosophy and mindset of the officers and administrators themselves.

> RECOMMENDATION 48: MPD should regularly review the activity of its Educational Resource Officers to determine whether the appropriate balance between prevention, problem oriented policing, and enforcement is being achieved.
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> RECOMMENDATION 49: MPD should work with school district administrators to ensure congruity of purpose with regard to mission and responsibility of EROs in the school setting.
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> RECOMMENDATION 50: In selecting EROs, MPD should broaden its selection process to include faculty, juvenile justice partners, and student leaders.
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> RECOMMENDATION 51: MPD should regularly seek input from school stakeholders and juvenile justice partners in evaluating the performance of its EROs on at least an annual basis.
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> RECOMMENDATION 52: MPD should collaborate with the school district in better communicating to the public the range of services it provides in the individual high schools.

RECOMMENDATION 53: MPD should closely review arrest and citations issued by EROs to ensure that officers appropriately use their discretion and do not unnecessarily enter juveniles into the criminal justice system.

RECOMMENDATION 54: MPD should develop a Field Training Officer program for its newly assigned EROs in order to foster transfer of skills and orientation of high functioning outgoing officers.

RECOMMENDATION 55: MPD should consider specialized training for its EROs in the arena of dealing with students who have identified behavioral/emotional issues.

RECOMMENDATION 56: The City should dialogue with the Police Officers' Association in order to amend the current contractual agreement so that EROs (and other specialized officers who are focused on community policing such as Neighborhood Officers, Mental Health Officers, and Community Policing Teams) who have established effective working relationships in their specific assignments, as determined by input from Department supervisors, the officers themselves, and stakeholders at the respective campuses can remain beyond five years.

RECOMMENDATION 57: MPD should consider moving to a "soft" alternative uniform for EROs, as a means of reinforcing the unique mission of these officers in the school setting.

SECTION SEVEN

Mental Health Resources and Training

Because officer-involved shootings and other critical incidents so frequently involve individuals in some type of mental health crisis, the increased national dialogue on police accountability necessarily involves a discussion on an agency's interaction with the mental health community. These issues have been part of the dialogue in Madison for years, in part because of the sensitivity of Madison residents to these challenges, and in part because of some innovative measures taken by MPD. These steps have placed the Department ahead of many other law enforcement agencies in its awareness of the importance of preparing officers to deal with this sensitive population.

The MPD has had an informal mental health liaison program for nearly two decades, beginning with a single sergeant designated as "Community Relations Sergeant" with the responsibility of coordinating with the Dane County Mental Health Center (now Journey Mental Health). In that role, she received all reports regarding MPD contact with a mentally ill individual with the goal of trying to proactively address problems through contacts at the Mental Health Center. After the MPD's decentralization effort in 2004, each of the five districts had a designated Mental Health Liaison officer (MHL), even though the Department had eliminated the Community Relations Sergeant position. Any report of officer contact with a person with mental health issues was routed to the MHL officer, who would liaison with mental health providers and attempt to give patrol officers additional tools for following up with or addressing future calls involving those individuals.

But the MHL positions were all filled by volunteers, meaning that each MHL officer also had to meet his or her regular job duties, and the mental health piece was an additional responsibility. The sergeant who had served as Community Relations Sergeant had been moved to another assignment, then got promoted to lieutenant, but continued serving as a liaison with the mental health community, also in a volunteer capacity. She gathered all of the MHLs, whose numbers had grown to about 20, for a monthly meeting to discuss systems-wide issues. For each these volunteers, there were no formal Department incentives for these contributions, other than the possibility of being afforded some additional mental health related training.

In fact, there was nothing at all formal about the MHL program – no formal strategy, work assignments, or MPD recognition – and the work was secondary to officers' regular assignments. Yet the work of these officers was nonetheless recognized as exemplary by the Department's mental health partners, and in 2011 MPD was named one of six national "Learning Sites" on improving law enforcement's responses to people with mental illness by the U.S. Justice Department's Bureau of Justice Assistance and the Council of State Government's Justice Center. The ongoing designation highlights Madison as a model for other agencies looking to develop a specialized mental health response program.

Mental Health Officer Program

Beginning in February 2015, the Department made a bigger commitment to its mental health response program, pulling five officers from field duty and designating them full-time Mental Health Officers (MHOs). There is an MHO assigned to each of the five districts, and they collectively report to the Community Outreach Captain, who holds weekly meetings with the MHO team. The MHL program continues, with about 30 officers (still working in a volunteer capacity as a collateral to their regular work assignments) providing another means of coordination between patrol officers and the MHOs.

The patrol officers' primary response to a person with mental health concerns is inherently reactive, driven by the nature of the call and the need to resolve that issue in some way before moving on to the next call. In contrast, the MHO response is intended to be proactive in a way that connects people with mental health services and may facilitate jail diversion. MHOs do not provide mental health care but rather work to connect mentally ill individuals who have come into contact with police with services and treatment, with the ultimate goal of diverting them from the criminal justice system.[39]

Before responding to a call for service, a patrol officer may recognize that there is a mental health component and reach out to a liaison officer or an MHO on duty for advice on how to handle the call and what options might exist for resolving the call in a meaningful way. More often, though, the patrol officer identifies the

[39] The Mental Health Team prepared an Annual Report for 2016 that laid out the program's mission, goals, and activities in a detailed, informative way.

mental health issue after-the-fact and routes his or her report to the MHO in an effort to get to the root of an issue and hopefully prevent future calls for services. MHOs may also be contacted to help with an ongoing call. For example, MHOs handle all emergency detentions, where officers, working in coordination with mental health professionals, have determined the subject of a call should be detained in a mental health facility for the protection of him or herself or others.

Partnership with Journey

The effectiveness of the MPD Mental Health Team's approach has always depended on a positive relationship with Journey Mental Health, which provides public mental health services throughout Dane County pursuant to a County contract. Beginning in February 2016, the Mental Health Team began a more formal partnership with Journey, when a Journey crisis worker was added to the MHO team.[40] Since then, Journey has added an additional crisis worker to the MHO team, and plans to add a third, pending the selection process. Having Journey crisis workers on the team makes the work of the MHOs more efficient and effective. The crisis workers review reports, monitor calls, and engage in direct, proactive outreach. They frequently ride with an MHO on calls and can provide direct connection to available services. Because they are mental health professionals with access to confidential medical records, they can facilitate services in a way a police officer never could.

For example, when patrol officers found an obviously mentally impaired individual wandering, they reached out to the MHL officer, who reached out to the crisis worker with access to the countywide records system. Without disclosing any details of the man's diagnosis or treatment, the crisis worker was able to tell officers that he had wandered away from a group home, and officers could return him there immediately. Without this contact, officers may have had no choice other than to initiate an emergency detention or spend hours of their shift trying to appropriately resolve the man's dilemma.

[40] MPD unsuccessfully applied for an outside grant to fund this position when it first established its MHO program. Journey recognized the value of this partnership and agreed to fund the position.

Benefits of the MHO program

Because MHOs' full-time job is to address mental health issues, they develop subject matter expertise and a network of connections with mental health professionals throughout the County. They are not responding to regular calls for service, and have the ability to devote time to innovative problem solving in a way that patrol officers and even MHL officers do not. This includes building relationships with case workers, family members and other advocates that hopefully minimize the need for future calls to the police and result in more equitable outcomes for mentally ill individuals.

For example, patrol officers responded to a burglary call at a woman's house to learn that the alleged theft was of some minor bathroom toiletry items that she noticed had been moved from their regular location. The easy response from the patrol officer would have been to dismiss the call because no crime had occurred; without additional resources, the officer understandably might have done that. But because the woman exhibited signs of mental illness, and the patrol officer could reach out to the mental health team, he referred the call to them. The crisis worker reached out to the woman who reported the burglary, discussed her needs and provided her with contacts within the County mental health system. Without that contact, it seems likely the woman would have continued to make burglary reports, tying up police resources with each call.

In a similar scenario, an elderly woman had been repeatedly calling 911 to report robberies, home invasion, and property damage, all of which were determined to be unfounded and based on paranoid delusions. Patrol officers referred the case to the MHO. The woman refused offers to connect her to mental health services, but the MHO met with her several times, after which she at least began directing her calls directly to the MHO, freeing up dispatchers and patrol officers.

In another instance, a crisis worker riding with a patrol officer responded to a call regarding a young man in apparent mental health crisis, reportedly struggling with manic episodes, causing minor disturbances with a family member, and making suicidal statements. The crisis worker was familiar with the individual and was able to speak with him on scene, assess the risk, confirm a safety plan, and divert him from being taken into protective custody to jail or hospital.

Another way MHOs assist patrol officers and further the Department's goal of promoting the safety of individuals in crisis, officers, and the community is through the dissemination of mental health safety bulletins. These one-page documents[41] capture a great deal of vital information about people who have had prior interactions with police and whom officers are likely to encounter again. They appear on an officer's in-car computer when he or she runs the subject's name in the system.[42] The bulletins address trauma history, mental health diagnosis, suicide attempts, history of worrisome interactions with police and, perhaps most importantly, a color-coded section that describes potential hooks, triggers, and guidance for negotiations. For example, one of the bulletins we reviewed lists "Cheetos" among the "hooks;" mentioning the subject's family as a potential "trigger;" and advises officers who are negotiating to use a flat affect, give space, and be alert for a possible attempt to grab the officer's gun. This type of information is invaluable to an officer responding to a call that he or she otherwise might know very little about.

These bulletins are a valuable tool for police, but they need to be regularly reviewed and either amended or purged from the system. A person who is in crisis today may not be in the same condition two months or a year from now, and someone in recovery or in the process of recovery does not want or need to be treated in the same manner as when they were in crisis. Further, officers should not be taking action on mental health concerns noted in a bulletin if those concerns are no longer valid.

When MHOs create these bulletins, they enter an alert into the Department's records management system, and also upload the document into the associated file or "jacket." The alerts require an expiration date, and routinely are set at one year, but the document itself remains in the system indefinitely. MHOs are generally aware of the concerns surrounding the duration of these notifications, but have no set guidelines to address them. Because of the potential for stigmatizing a person months or years down the line whose current condition and behavior may no longer be consistent with that described in an outdated mental

[41] MHOs often attach a full detailed mental health history to the one-page bulletin, but include the most pertinent details in the bulletin.

[42] Officers also may put an alert in the system accessed by the 911 Center so that the dispatcher can notify officers responding to a given address of mental health concerns associated with that address.

health bulletin, MPD should have protocols for deleting or amending these bulletins.

> RECOMMENDATION 58: The Mental Health Team should develop guidelines or protocols for periodically reviewing mental health safety bulletins and associated alerts to assess whether they should be amended or purged from the system.

MHOs also have played a key role in facilitating and assisting with emergency detentions (EDs), in which a person is involuntarily transported to a hospital or mental health facility for further evaluation and possible commitment when mental illness is causing them to be dangerous to themselves or others. Emergency detentions require a good deal of coordination between the Journey crisis workers, the admitting facility, and the officer. Most EDs are still handled by patrol officers out of necessity because they are too numerous[43] and too time-consuming for an MHO to handle every one,[44] but the MHO or liaison officer is frequently consulted as a resource to the handling officer, and can and will step in to handle an ED that proves to be complex or requires additional follow up.

In our public outreach efforts, we found some misunderstanding about the mission and goals of the MHO program. On the one hand were concerns that police officers should not be acting as social workers or providing mental health services; on the other, some questioned why team members are not involved in every given situation involving a mental health concern. As a result of this, and a lack of regular information about the daily activities of the Mental Health Team, some City stakeholders have suggested returning the MHOs to patrol service.

We do not agree, but do think better communication is warranted under the circumstances. The Mental Health Team publishes an annual report of its activities that, for 2016, communicated valuable information about the team's

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[43] In 2016, MPD fielded a total of 193 calls that ended with a formal emergency detention. MHOs did 71 ED evaluations, of which 42 resulted in formal involuntary detention.

[44] We heard frequently about the state's decision to re-locate its capacity for civil commitments from the Mendota Mental Health Institute in Madison to the Winnebago Mental Health Institute near Oshkosh, and the resulting burden on police resources, since officers now have to make the 90-mile drive (each way) for each emergency detention. We also understand that a possible "fix" is pending before the state legislature.

activities and accomplishments. While an annual report provides valuable information, it is limited by the frequency of its publication and the depth of dissemination to the Madison community. Recently, the Department has created a blog that reads like a traditional daily crime blotter still published in many small town newspapers. Because the work of the MHOs is consistent with MPD leadership's stated goals of shifting resources to problem-oriented policing, a sample of the daily activities of the MHOs should also be featured in that daily report. Using that vehicle and promoting through other media outlets some of the team's success stories, the Madison community will be better apprised of what the MHO program is about and what the officers and crisis workers are actually doing in the field.

> RECOMMENDATION 59: MPD should consider promoting regular communication to the public about the activities of its Mental Health Team by, among other methods, including a sample narrative of the team's activities in the daily crime blog.

Realities and Limitations of the MHO Program

What the Mental Health Team approach does *not* do is attempt to supplant the patrol officer's role as the first response to calls involving mentally ill individuals. Because, as we discuss in more detail below, every patrol officer receives an extensive amount of instruction and training on dealing with mental health issues and crises while in the Academy, the presumption is that every officer is equipped to handle such calls, as an initial responder. Dispatch does not route mental health-related calls to mental health liaisons or MHOs, and those positions are not structured or funded in a way as to make it practical for them to handle every such call. The Journey crisis workers regularly make home visits to follow up on calls, and though they occasionally will ride with a patrol officer when their schedule permits, there is no expectation that they will be in the field on a regular basis, assisting with calls as they develop.[45] Rather, the Mental Health Team mainly

[45] There are some cities, such as Portland, Oregon, where mental health crisis workers partner with specially-trained officers in a mobile crisis unit that is more regularly available to respond in real time to assist patrol officers with mental health related calls. Many cities have specially designated patrol officers who have received extensive training beyond what a patrol officer receives who are dispatched, when possible, when there is an indication of mental illness. Each agency has a

responds after-the-fact, and their involvement in a case is dependent on the patrol officer either calling them for assistance or routing his or her report to them with a "mental health" designation.[46]

Because the MHOs and liaison officers do not immediately respond to calls for service,[47] this can add to the frustration of some community observers when the Team members are not involved in an incident involving a mentally ill individual that ends badly. But the Mental Health Team program was never intended to handle these types of emergent calls. Even if MPD had the type of mental health program where crisis workers were in the field with officers handling calls, there are limitations to how it would work. In those situations where there is a concern about a weapon or possible danger to responders, for example, the Journey social worker would not be called upon to take a front-line position and would rely on officers for the first response.

These limitations, while understandably disappointing, should not overshadow the Mental Health Team program's value. While Madison may wish, in the future, to explore the potential for having a mobile crisis unit with co-responding officers and social workers, we do not question the benefits provided by the current program's approach to identifying problems and working toward a collaborative response with mental health service providers, involved individuals and family members.

The larger question that has been raised by some in the Madison community is whether the responsibilities performed by MHOs are best performed by a sworn police officer. Many argue that the relevant resources should be diverted to social

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somewhat different model for addressing mental health concerns, and each has its own set of advantages and disadvantages.

[46] Some gaps in the data lead to concerns that patrol officers are not taking the proper steps to ensure that mental health-related reports are being routed appropriately to the Mental Health Team. The team is searching for a more seamless way for reports to be directly forwarded to them. We encourage them to continue that effort, including looking at software innovations that may provide the best solution.

[47] Indeed, MHOs do not even have cars assigned to them for use during their shifts, but are required to borrow an available patrol car when they need to respond in the field. Moreover, for some mental health calls, driving up to a residence in a traditionally marked police car is less than ideal. We learned that the Department has made plans to provide the Mental Health Team with cars, and we encourage MPD to follow through on that plan.

service providers. In essence, the argument asks what element of the training and authority of law enforcement officers that makes it preferable for police to fill this function, especially when the Team's officers are not regularly responding to active calls involving emotionally disturbed persons. Would it not be more effective and efficient to instead fund the salaries of additional clinicians who either work for MPD or work closely with MPD performing those duties?

To better answer those questions and make the case for the value of the program to the Madison community, it is critical that MPD do more in documenting the day-to-day activity of its MHOs. That improved documentation and communication effort could also help the Department identify new ways to efficiently and cooperatively interact with the City and County's mental health services infrastructure to improve the Department's response to people with mental health concerns.

> RECOMMENDATION 60: MPD should devise methods to fully document the daily activity of MHOs, in part to facilitate a larger internal and external discussion about whether those activities are necessarily or best handled by police officers.

Of course, these questions raise even larger societal issues about the availability of the mental health services. Throughout our review, we learned of the frustrations – typical in many cities – of insufficient resources to address ever-growing mental health crises. Too often, people who need mental health treatment are unable to get it because of limited resources. If they cannot pay or do not have private health insurance, they wait for County-provided services through Journey, which is not staffed or funded in a way that enables it to meet all of the demands for treatment. And the services that are provided can be patchwork and difficult to navigate. Other community-based mental health centers face similar funding crises, and many have shut down in recent years.[48]

As a result, people who voluntarily seek help often wait so long that a manageable illness becomes a crisis through lack of treatment, and the police land in the

[48] The City's difficulty in managing mental health concerns was exacerbated when Journey's Crisis Unit, which used to be located downtown, outgrew its space and moved to the west side, frustrating many because there is now no walk-in crisis center in the part of the city where there is the greatest demand.

middle of this troubling paradigm. Once people are in crisis, they are more likely to attract the attention of law enforcement. Officers who identify a mental health concern often have no good options for getting the individual needed help. Despite officers' best intentions for diverting someone from jail, therefore, if the person doesn't meet the criteria for an emergency detention,[49] sometimes there are no other alternatives. This is unsatisfying on a number of levels, but a fair assessment recognizes law enforcement's limited control.

Supervision

When MPD began its MHO program, it applied for a grant to fund a sergeant to supervise the MHOs, as well as a crisis worker and a researcher. MPD did not receive the grant, but Journey provided funding for a crisis worker, and the University of Wisconsin supported the research effort. MPD did not find funding for a sergeant, so for almost two initial years of the program's existence, the five MHOs have been reporting directly to a Captain. This is far from ideal. The Captain has a long list of other responsibilities and cannot meaningfully supervise the day-to-day activities of these officers. We intended to support the recommendation made in the Mental Health Team's most recent annual report that MPD assign a sergeant to the team, but learned recently that the funding has been allocated and the Department is currently interviewing sergeants for the position.

> RECOMMENDATION 61: MPD should quickly fill the position of Mental Health Team sergeant and should maintain funding for this position to ensure effective supervision of the team.

Training Issues

In many agencies, training on handling mental health related calls is referred to as "Crisis Intervention Team" (CIT) training based on a model first developed in Memphis, Tennessee. The standard CIT training program is a 40-hour block that includes interaction with people who have personal experience with mental illness

[49] Generally, the individual has to be assessed by a mental health professional and determined to present a danger to him or herself or others.

or mental health crisis, learning from mental health professionals, curriculum on verbal de-escalation skills, and scenario-based training.

MPD has never had traditional "CIT" training, but instead refers to its mental health training as "specialized police response" training. Instead of a 40-hour block, it presents nearly 100 hours of mental health/crisis related curriculum throughout its seven-month Academy, including classroom time and practical scenarios. MPD has sent trainers to CIT training for the purpose of evaluating that model to ensure that the curriculum presented is covered in the MPD Academy, and as a result feels confident that all of its officers have received the equivalent of "CIT" training, plus considerably more.

Beyond the Academy, the MPD Training Division coordinates a range of mental health-related training, including a more traditional 40-hour week of CIT training that is most frequently attended by outside agencies but is open to MPD officers who want to refresh their knowledge. There are also regular presentations at the bi-annual in-service training that all sworn personnel are required to attend,[50] and eight-hour blocks of advanced training on specialized subjects (such as juvenile mental health). In addition, all MHOs and liaison officers attend an eight-hour training every quarter that is facilitated by an MPD sergeant but generally taught by outside trainers.

Most agencies that deliver mental health response training, as well as agencies using the CIT model, present mental health training in a designated block that encourages or allows officers to compartmentalize that training. We believe MPD's approach of integrating mental health related training into its broader Academy curriculum has greater learning potential, as it weaves themes relating to mental and emotional health in a way that more truly mimics real life policing.[51]

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[50] The curriculum for in-service training is determined by the Training Division with input and approval of MPD executives. While there is no requirement that mental health related subjects are presented with any set frequency, our review of all recent in-service training indicates a strong inclination toward regularly instructing on mental health and/or crisis related subjects.

[51] A recent publication by the Police Executive Research Forum identified the failure to incorporate tactical training with verbal de-escalation skills as a shortcoming of traditional CIT training. Integrating Communications, Assessment, and Tactics (October 2016; http://www.policeforum.org/assets/icattrainingguide.pdf).

Particularly with respect to scenario training, for example, if officers know ahead of time that the situation they are confronting has a mental health component, they approach it with certain expectations that may minimize the educational value of the exercise. Conversely, a scenario where officers first have to identify and determine whether the subject is exhibiting a possible mental health issue more realistically represents what officers deal with on a daily basis. This distinction is even more pronounced in use of force scenarios. The typical scenarios run in a designated CIT training do not have officers geared up to use force, so they know from the outset that they are expected to be able to talk their way through the situation.

A more integrated approach to training has officers enter a scenario not knowing whether the situation will require force or whether they will be able to succeed solely through de-escalation tactics. The MPD's approach encourages trainers to run scenarios in this way. Mental health staff, including the Journey crisis worker, run Academy training scenarios with a mental health component, but these scenarios are woven into broader scenario training days, not presented in a dedicated block of mental health training. Likewise, students confront scenarios with a potential use of force component that may or may not involve a mentally ill, intoxicated, or emotionally disturbed person, requiring use of force decision-making skills that more closely reflect real world calls.

One way for the Department to refine this training would be to cross-train MPD patrol tactics and force instructors to also run and debrief mental health crisis scenarios. This would serve two purposes. First, it would help avoid the predictability of having students enter a scenario, see a certain set of instructors, and immediately think, "mental health scenario." Second, it would strengthen the Department's message around the importance of de-escalation in crisis situations by reinforcing in patrol tactics and force trainers the value of crisis communications skills, even in those situations when officers also need to consider force options.

Overall, we found the Department's training on issues surrounding their specialized police response to be solid. Nonetheless, no matter the strength of the overall program, and no matter how many positive outcomes are recorded, the Department has seen in recent years how a single incident can erode trust in the Department and its systems. As we discuss in greater detail in the report section on Training, we found MPD trainers generally willing to consider new ideas and

look to outside agencies in an effort to maintain best practices. Given the potentially high stakes in incidents involving individuals in mental health crisis, MPD should regularly evaluate its training regarding its specialized mental health response to make sure it continues to be consistent with best practices and maximizes its ability to meet the demands of the Madison community.

> RECOMMENDATION 62: MPD should continue to integrate use of force training scenarios with scenarios involving someone in a mental health crisis.

> RECOMMENDATION 63: MPD should cross-train patrol tactics and force instructors to also run and debrief mental health crisis scenarios to strengthen the Department's message around the importance of de-escalation in crisis situations, even in those scenarios when officers also need to consider force options.

Policy Issues

MPD has an SOP on Mental Health Incidents/Crises that was last amended in July 2017. We have several observations and suggestions for ways that policy could be amended to provide greater clarity and guidance to officers about the Department's standards and expectations.

The SOP is five pages long and covers a range of topics, including guidelines for response to various situations, emergency detention procedures, description of the Mental Health Liaison/Officer program, and dealing with dementia patients at assisted living facilities. This range of subjects leads to an overly long policy in which some important concepts may be overshadowed. The Department should consider breaking up the SOP, with separate policies addressing the particulars of emergency detention criteria and procedures, other specialized responses (i.e., dementia patients), and response guidelines.

In addition, the SOP mentions officers' training to de-escalate crisis situations, but does not specifically address tactics or procedures for handling crisis situations particular to individuals who officers believe may have mental health issues. A policy outlining guidelines for response to mental health crises should

include specific reference to the principles the Department expects officers to employ in these situations, consistent with the training they receive.

Finally, the Department should eliminate its use of the term "abnormal behavior" from its policy because of the potential for promoting bias and stigma such language carries.

> RECOMMENDATION 64: MPD should amend its SOP on Mental Health Incidents/Crises by breaking it into separate policies that would address separate topics, and would specifically include the tactical principles the Department trains and expects its officers to employ in addressing situations involving individuals in mental health crisis.

Data Issues

Data collection and analysis are important functions across many different facets of a law enforcement agency. But the issues can be complex, and the ability to draw meaningful conclusions is often limited by the quality of the data input into a given system, as well as limitations of the management system itself. For example, MPD estimates that ten percent of its mental health contacts result in arrest. But that is mostly an educated guess, because the Department's Law Enforcement Records Management System (LERMS) only tracks calls that generate a report, and many mental health related incidents are cleared informally, without a report. We understand that this critical gap in data collection presents a challenge for a number of reasons involving complex definitional issues, technology limitations, and police culture. Other jurisdictions have grappled with the issue to varying degrees of success, and there may be lessons for Madison to learn from those agencies.

Data issues are particularly important to a program like the MHO team – a relatively new program whose resources have been diverted from other tasks and whose value and success may consequently be called into question. The Captain responsible for the Mental Health Team at the time of its inception recognized the need to capture results-oriented data as a way to monitor the program's success, and included in her initial grant application a request for funding a researcher to help generate evidence on the strengths and weaknesses of the program. As noted

above, MPD did not receive this grant, but secured the volunteer assistance of a Ph.D. student from the University of Wisconsin Sociology Department.

The UW sociologist undertook a significant project in an attempt to draw some meaningful conclusions based on available data, and confirmed a number of things that officers and mental health professional have long believed to be true, including:

- Mental health related incidents with co-occurring substance use represent a growing share of all mental health incidents.
- A relatively small number of subjects generated a disproportionate number of mental health related police reports.

The sociologist also drew some conclusions about the Mental Health Team, including:

- From its inception in February 2015 through the middle of 2016 (the end of her study period), the number of requests for MHO assistance increased month-by-month.
- The number of reports an individual generated after contact with the Mental Health Team was statistically significantly lower than the number generated before that contact.
- The number of reports an individual generated typically increased in the months just before and during the pendency of MHO contact, before decreasing.

The efficacy of the sociologist's research was limited by the quality and reliability of the available data. For example, the way the MHOs track their contacts does not include a unique identifier for each individual, limiting the ability to link information across various systems. More broadly, the team has not clearly defined performance measures that can be consistently tracked and monitored to provide benchmarks for how the Department – and the community – define success for the program.

The UW sociologist's project was useful, but relatively short-term, and the Mental Health Team recently began working with a volunteer statistician. So far, his work has focused on the resources dedicated to emergency detentions and has not followed on the work of the UW sociologist. It is a testament to MPD's role in the broader Madison community that it has been able to secure pro bono help

with its data gathering and analysis tasks, and the team should be credited with recognizing the need for these services and finding innovative ways to meet the need in a budget-neutral way. But relying on volunteers does not provide an ideal level of consistency across these important tasks.

> RECOMMENDATION 65: MPD should look for innovative ways to fill the critical gaps in its efforts to collect data on mental health contacts with police.
>
> RECOMMENDATION 66: The MPD Mental Health Team should develop a set of clearly-defined performance measures that can be consistently tracked and monitored to provide benchmarks for how the Department and the community define success for the mental health program.
>
> RECOMMENDATION 67: The MPD Mental Health Team should work to integrate its volunteer assistants with Department resources in a way that provides consistency in data gathering and analysis tasks.

PART TWO:
MPD RESPONSE TO CRITICAL INCIDENTS

SECTION ONE
Criminal Investigations

When an MPD officer is involved in a critical incident – the death of an individual in custody, a fatal traffic collision, or an officer-involved shooting, for example,[52] the initial priority is a criminal investigation of the event; this is generally by an outside agency when the incident involves a fatality. The investigation is scoped to determine whether any involved officer should be held liable criminally for his actions. Following disposition of the criminal investigation, there is an administrative review by the Professional Standards and Internal Affairs Unit (PSIA) to assess compliance with MPD polices. We have some comments and recommendations on specific issues relating to criminal investigations, and advance a complete overhaul of the way in which the Department conducts its administrative reviews.

Wisconsin law requires that investigations into officer-involved deaths be conducted by an outside law enforcement agency. Since the bill was enacted in

[52] MPD addresses the subject in its SOP under Officer Involved Deaths and Other Critical Incidents. Adopting the terms of relevant state law, it defines an Officer Involved Death as, "An incident involving the death of an individual that results directly from an action or an omission of a law enforcement officer . . ." An Officer Involved Critical Incident is defined as "An event in which an officer is involved as a principal, a victim, or is the custodial officer, where significant injury likely to cause death occurs or when an officer intentionally discharges his or her firearm at another person."

2014, MPD officer-involved death investigations have been handled by the Wisconsin Department of Justice's Division of Criminal Investigation (DCI). The law is silent with regard to investigations into incidents in which deadly force is used but a person is non-fatally injured, or shootings in which no one is hit. Under those scenarios, MPD policy provides that the Chief will determine whether to request an outside agency or whether MPD will handle the investigation internally. If MPD conducts the investigation, the Department is required by the SOP to request an observer from an outside agency to monitor the investigation.

The Department's SOP governing officer-involved deaths and other critical incidents contains an incredibly detailed list of procedures and protocols to follow in various circumstances and given different contingencies. We found this list to be comprehensive, but note three major areas where procedures need be improved.

Timing of Interviews

Under current DCI guidelines, involved officers may be sent home for 24 to 72 hours after an officer-involved shooting incident prior to being interviewed or giving a formal statement.[53] These kinds of delays are unfortunately common practice in many police agencies, in part because of union contracts, but they have understandably contributed to community mistrust of officer-involved shooting investigations and are not consistent with best investigative practices.

For non-fatal critical incident investigations conducted by MPD, the Department policy states that interviews "should be delayed to allow the involved officer time to overcome the initial stress of the incident." Unlike the DCI protocols, there is no length of time specified. If the delay is intended to be a couple of hours, it is inconsequential because it typically takes investigators at least that long to perform other tasks before they are prepared to interview the involved officers. If however, the language is interpreted to provide a delay of several days, the same problems exist for both MPD and DCI protocols.

[53] In general, with this one exception, DCI's investigative protocols are sound and follow best investigative practices.

By permitting this delay, investigators forfeit the opportunity to obtain pure contemporaneous statements from the involved officers about what each did and why they did it. Instead, the investigative protocols allow the involved officers' versions to be subject to contamination and recall issues as a result of the passage of time or the inevitable exposure to other accounts of the incident from media sources, legal representatives, or fellow officers. This is especially true in today's highly-charged environment of pervasive social media coverage of fatal officer-involved shootings. In addition, any leads or further investigative guidance that might be derived from the involved officers' version of events are hindered and perhaps lost because of the several-day delay.

Conversely, and in support of delay, some officer advocacy groups have referenced studies which suggest that memory improves and that statements will be more accurate after an involved individual has had an opportunity to de-stress, sleep, and process an event. Those arguments, however, undervalue the competing factors detailed above.

Moreover, if the premise that memory improves with time were truly accepted by police agencies, they should theoretically delay the interviews of witnesses, victim, or suspect statements after any event. Obviously, this would not be consistent with actual and accepted police investigative practices, as evidenced by the investigators who work tirelessly in the hours following these incidents to conduct more timely interviews – including of officer witnesses. However, the officers who fired their weapons – those most knowledgeable and whose conduct is being reviewed – are not interviewed for days. MPD should not follow this ill-conceived investigative protocol adopted by DCI,[54] and should clarify its current policy to indicate that officers are to provide a statement to investigators prior to being released from duty. [55]

[54]When DCI conducts a criminal investigation of a fatal officer-involved shooting and is intent on sending the officer home without a formal interview, MPD should obtain an administrative interview of the officer so that at least the Department will have a contemporaneous statement from the officer of what occurred.

[55] There will be exceptional circumstances when a contemporaneous statement is not possible as when an involved officer is significantly injured.

RECOMMENDATION 68: MPD should clarify its officer-involved critical incident SOP to ensure that, absent extraordinary circumstances, investigators should obtain a statement from involved and witness officers prior to release from shift.

SECTION TWO
Video Review Protocols

Police activity is increasingly being captured on video – as with MPD's in-car video system, public and private surveillance cameras, and individual cell phones. For critical incident investigations, the DCI protocol is for investigators to interview involved and witness officers prior to the officers viewing any type of video of the incident.[56] DCI agents complete a formal detailed interview, and then give officers an opportunity to watch any video, after which officers may make any additional statements before the agents conclude the interview.

The DCI protocol is consistent with investigative best practices because it ensures that officers will not be consciously or unconsciously influenced by external evidence in the investigators' control.[57] Cognitive science research is clear that an individual's memory of what happened will be suggestively influenced by viewing video footage, often in ways that the person is not even aware of. Because the officer's perception of an incident goes to the fundamental "state of mind" question, it is essential that investigators preserve the officer's initial memory by obtaining a statement that is untainted by exposure to video footage.

It is important to note here that potential deviations between an officer's perception and what is depicted on video are normal and even expected, given the impact of stress, distractions, vantage point, and the natural flaws in human memory. Obtaining an untainted statement from an officer is not about playing a "gotcha" game and trying to catch an officer in a "lie." Rather it is about trying to ensure a thorough, neutral investigation. The officer's memory provides one perspective on the event; the video may show another. The two depictions will never match in every detail; even if the video is from the same vantage point as the officer, it will not necessarily capture what the officer observed, since he or she may have been looking at another aspect of the scene. There are many possible explanations for inconsistencies between the two, and the officer should

[56] If an officer refuses to provide a statement without first viewing the video, the investigator is to contact the prosecutor for guidance. We are hopeful that the prosecutor will resist authorizing a preview of the video by involved officers.

[57] However, because of the delay in interviewing officers built into DCI's protocols, involved officers most likely will have reviewed video of the incident prior to being interviewed by DCI if it is in the possession of outside sources and aired on news outlets or downloaded onto social media.

be given the opportunity to explore those after providing a pure statement and then being shown the video.

On this issue, current MPD policy relating to critical incident investigations[58] is ambiguous. It states:

> If audio and/or video records are available, and are relevant to the involved officer's point of reference of the incident, the involved officer may be allowed to review the recordings prior to or during their formal statement.
>
> a. Generally, the formal statement should begin with the involved officer providing a statement based on his or her recollection of the incident. Relevant video/audio may then be reviewed (in the presence of a member of the OICI[59] team) prior to the completion of the formal statement.
>
> b. Deviation from this guideline is at the discretion of the OICI commander.

The first sentence of MPD's current policy is unclear and potentially conflicts with the second sentence. If the first sentence is deleted from current policy and the second sentence is rephrased to be more definitive – by deleting "Generally" and changing "should" to "shall" – MPD's policy would be consistent with the DCI protocol and in line with best investigative practices. Finally, the policy should not give the OICI commander authority to deviate from the policy.

> RECOMMENDATION 69: MPD should clarify its SOP on officer-involved deaths and other critical incidents to ensure that investigators obtain a statement from involved and witness officers prior to providing the officers opportunity to review any recording of the incident.

[58] MPD's current SOP governing in-car video does not address the issue of when officers should view the recorded evidence.

[59] OICI abbreviates the term "Officer Involved Critical Incident."

SECTION THREE
Interactions with Family Members and Witnesses

DCI's current protocols provide guidance to its investigative team on important collateral issues, including the need to develop rapport with the decedent's family and maintain communication with the family throughout the investigative process. In contrast, MPD's current officer-involved shooting protocols provide little guidance to its personnel regarding contact with the family. Particularly for cases in which an individual is seriously injured as a result of the shooting or other police activity, it is important for MPD, as the investigative agency, to provide that direction. To the degree that DCI's protocols provide helpful guidance, MPD should adopt them as part of its officer-involved shooting policy.

MPD's lack of established protocols in this area has proved to be a detriment in some situations. We heard of incidents where there were delays in family members' access to critically injured individuals who have been transported to the hospital. The inherent tensions and emotions of these situations are clearly challenging, highlighting the importance of clear written guidelines. Law enforcement should do its best to be sensitive in these highly charged scenarios and try to accommodate families' reasonable requests for access.

The District Attorney's Office has a Crime Response Program that has social workers available around the clock to help coordinate outreach efforts for victims of crimes. MPD has a longstanding symbiotic relationship with this office that extends to officer-involved shooting situations. While there is no MPD policy requiring notification following a critical incident, MPD historically and to its credit has involved the Crime Response Program in its initial response.

The recently-developed DCI protocol does include notifying the office. As an indication of MPD's regard for the concept, we learned a detail from one of the first MPD officer-involved shootings that DCI was called on to investigate. Handling DCI personnel were not aware of the resource the Crime Response Program provided and did not immediately notify them. MPD Chief's however, who had come to the scene himself, noted the absence and made the notification personally. A social worker then responded to serve as a resource for the decedent's family.

In addition to continued support of the Crime Response Program, it may be helpful to integrate and incorporate the City's recently-developed Rapid Response

Team as part of the post-officer-involved shooting response. As discussed above in Part One, these community representatives are specially designated to address post-incident issues after a violent incident, including developing relationships with the decedent's family. The presence of such an individual on scene after an officer-involved shooting could provide an additional helpful resource to establish a rapport with the family and serve as a liaison to ensure that issues such as access to the critically injured person are thoughtfully considered.

Another potential area for improvement in the protocol relates to post-incident handling of witnesses. We heard concerns about MPD "holding" witnesses to a critical incident for later interviews in circumstances that could seem compulsory. While we acknowledge investigative priorities in the immediate aftermath of a shooting, these should be balanced with the rights of potential witnesses. Accordingly, authorities should be both clear in communicating options and responsive in deferring to witness preferences.

With respect to the concerns of both family members and witnesses, MPD should seek to facilitate the sensitive management of these interests to the extent possible. Clear policy guidance can be helpful in both regards.

> RECOMMENDATION 70: MPD should review DCI protocols regarding contact with family members after an officer-involved shooting and integrate them into its own officer-involved critical incident protocols.
>
> RECOMMENDATION 71: The City and MPD should consider using the Rapid Response Team as a resource in the specific context of interacting with family members after an officer-involved shooting.
>
> RECOMMENDATION 72: MPD should create guidelines within its officer-involved critical incident SOP to address the concerns of witnesses to the incident.

SECTION FOUR

A More Holistic Review Model

Administrative Investigations and Interviews

The criminal investigation conducted by DCI is intended to collect sufficient facts for the District Attorney to determine whether the use of deadly force constituted a crime. As a result, the investigation is narrowly focused on that specific moment of officer action and the reasons for it. Investigators do not gather evidence with an eye toward making a broader assessment of the incident, such as whether the performance of any officer violated agency policy. The criminal review process typically does not assess pre-event tactical decision making, evaluate the decisions of supervisors, or consider post-incident conduct such as the timely provision of medical care. Still, these are issues worthy of inquiry and careful consideration by the involved Department.

After the completion of the criminal case, and per the relevant SOP, MPD's Professional Standards and Internal Affairs Unit is responsible for conducting an "internal investigation to ensure compliance with the MPD Policy, Procedures, Regulations, Work Rules, and Training and Standards." In the relevant case files we studied, the PSIA review usually relied entirely on the criminal investigation's collection of facts, summarized those facts, and rendered findings that were limited to the question of whether the use of deadly force was within policy. Contrary to its stated policy, MPD's current administrative process does not usually consist of an "investigation," but instead a repackaging of the facts collected by the criminal investigators.

Because the interviews of involved officers that criminal investigators conduct are generally narrow in focus, as we describe above, many police agencies routinely conduct follow-up interviews of involved and witness officers, as well as supervisors, when conducting the administrative investigation. In those interviews, questions regarding planning, tactical decision-making, supervisory decisions, communication, equipment, and post-shooting conduct are thoroughly explored. This provides the agency with a comprehensive fact set upon which to evaluate officer performance and identify other issues relating to the use of deadly force. The intent of these administrative investigations is, in part, to ensure individual accountability for lapses in performance, but the broader goal is to

enable a review process with an overarching objective of ongoing, Department-wide improvement.

For its part, MPD's current practice is not to routinely re-interview involved and witness officers for these purposes.[60] Instead, the Department generally relies on the interviews conducted by the criminal detectives in making its administrative determinations. This resultant gaps in evidence may end up being even more pronounced now that DCI has assumed investigative responsibilities for fatal shootings: MPD no longer has any ability to influence the breadth of the initial interviews. It is therefore incumbent on MPD to adopt officer-involved shooting protocols that will ensure that all involved and witness officers are interviewed administratively.[61]

Additionally, there may be other witnesses whom MPD will need to interview to answer important questions about the event as a whole. An assessment of medical care's timeliness after the use of deadly force is now standard in progressive police agencies' administrative review. In order to make this assessment, investigators often need to interview emergency medical providers and obtain related records, tasks not typically completed by criminal investigators. MPD's administrative investigation should take this sort of initiative.

> RECOMMENDATION 73: MPD should automatically conduct an administrative investigation of all officer-involved shootings and other critical incidents separate from any criminal investigation, including, at a minimum, re-interviewing involved and witness officers.

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[60] We did review some cases where administrative interviews were conducted, but this was not common. Making such protocols standard after critical incidents has the benefit, for officers, of eliminating any stigma associated with the interviews. The interview becomes accepted practice – something done after every shooting – and not an indication that the Department has pre-judged the case to be problematic.

[61] The current SOP on officer-involved critical incidents contemplates using Detectives who are uninvolved in the criminal investigation as primary interviewers for a compelled administrative interview. For these purposes, the Detectives report directly to PSIA and essentially act as Internal Affairs investigators. In developing new protocols for routine administrative investigations following critical incidents consistent with this report, the Department should refine this protocol to ensure that a small group of specially-qualified investigators be tasked with conducting these interviews.

RECOMMENDATION 74: If the criminal investigation has not obtained a full account of the observations of the on-scene emergency medical providers, MPD should interview them as part of the administrative investigation.

Comprehensive Internal Review of Critical Incidents

As we suggest above, critical incidents such as officer-involved shootings provide an opportunity for learning and improvement well beyond the determination of whether the use of deadly force was within policy. Accordingly, many law enforcement agencies have expanded their inquiry and review of these incidents[62] to address issues such as:

- Officer decision making that preceded the use of deadly force;
- Tactical decision-making prior to the use of deadly force;
- Efficacy of any on scene or remote supervision;
- Effectiveness of radio (including dispatcher) communications;
- Effectiveness and availability of appropriate equipment;
- Whether current policy provided sufficient guidance to involved officers;
- Sufficiency of current training to prepare officers for the circumstances presented;
- Post-incident decision making, including how effectively the on-scene officers transitioned to rescue mode and provided first aid;
- Communication with paramedics and the speed with which the scene was secured; and
- Effectiveness of communication with the family of injured individuals regarding notification and any requests for access to the hospital.

Instead of assigning the administrative review to one person and having the document ascend the traditional chain of command, many agencies with which we

[62] President Obama's Task Force on 21st Century Policing expressly endorsed this reform: "Law enforcement agencies should establish a Serious Incident Review Board comprising sworn staff and community members to review cases involving officer-involved shootings and other serious incidents that have the potential to damage community trust or confidence in the agency. The purpose of this board should be to identify any administrative, supervisory, training, tactical, or policy issues that need to be addressed."

have worked convene a roundtable of command staff and departmental subject matter experts to consider the case.[63] The discussion takes a holistic approach to the shooting, and participants make determinations regarding both individual officer performance and systemic issues, often in different phases.

We have observed and participated in countless such critical incident review meetings, with slight variations between jurisdictions. While each agency should tailor the concept to its own structure and institutional practices, there are a few key components that we believe are most central to the success of the program:[64]

- The meeting should be convened relatively soon after a critical incident, preferably within a week or two. The investigation is generally still ongoing,[65] but ideally the Department will know enough to begin the discussion on some important topics, including individual accountability,[66] tactical decision-making, communications, supervision, equipment, and training concerns. A follow-up meeting should be convened at the conclusion of the investigation.
- Participants should be encouraged to think comprehensively about identification of issues, including things that may seem collateral to the use of force but may provide a window into a needed policy, training, or equipment change the Department may not have otherwise considered.
- A clear list of "action items" should be developed, with assignments given to participants for appropriate follow up. At a minimum, post-meeting action items should include a debrief with all involved officers and supervisors to discuss issues raised and insights gained

[63] We also expect that the proposed independent police auditor, the City's Risk Manager, and a representative of the City Attorney's Office would be in attendance.

[64] Termed by some as "root cause analysis," the review is intended to ensure a holistic approach to each deadly force incident so that the Department and its officers are better equipped to address future challenges.

[65] The fact that DCI is now responsible for criminal investigations in fatal shootings could be an impediment to this early review process, as the Department may not have access to much information developed during that investigation until its final disposition. The Department should work with DCI to develop protocols for information sharing in this format.

[66] While the sole focus of the review is not whether involved officers' violated Department policy, MPD will still need to identify potential violations of policy and performance issues that are so below expectations that formal discipline may be warranted.

through the review process. Additional remedial action could include retraining for specific officers, creation of new training curricula or Department-wide training bulletins, assessment of equipment, and new policy development.

- The process should include an effective mechanism for feedback to the group, to ensure thorough and timely completion of assigned action items.

In our work in this area, we have frequently heard the objection that a robust review of officer-involved shootings amounts to "Monday morning quarterbacking" that is unfair to officers. We appreciate the sensitivities that come with the exacting scrutiny of stressful and dangerous events. Still, in our view, the value of a rigorous subsequent assessment has too much importance to be bypassed in deference to those sensitivities. In fact, the dismissive football analogy itself overlooks just how much thorough analysis of each play occurs in the aftermath of every game. The goal, of course, is a constructive influence on future performance. Given the vastly greater significance of a law enforcement agency's critical incidents, it is important to overcome initial discomfort and pursue a respectful but thorough review.

Some in Madison have raised the further concern that creating such a review process could hurt the City's litigation position, because issues will be identified and corrections will be made that litigants can point to and use to their advantage in the lawsuit. However, there are evidentiary laws limiting the use of post-incident remedial actions in litigation. And even if improving Departmental training or policy were to theoretically damage the City's position in a particular lawsuit, that concern should never override the imperative of engaging in reforms that could improve future outcomes in this vital area of law enforcement.

For MPD, such a robust internal review of these incidents can and should be seen as a natural outgrowth of its Core Value of "Continuous Improvement."

RECOMMENDATION 75: MPD should develop a robust review process after a critical incident such as an officer-involved shooting that examines the incident through the lenses of performance, training, supervision, equipment and accountability. The review process should consider pre-incident decision making and tactics, the use of force, and post-incident response, including the provision of medical care and communication with family members. The review process should include the development of a corrective remedial plan designed to identify and address any issues identified.

SECTION FIVE

Officer Wellness Concerns

The City operates an Employee Assistance Program (EAP) to support officers and other employees who may be struggling with personal issues. The program maintains three full-time staff members to whom employees or their family members can turn for counseling services. The City also has an external, private EAP provider for employees who do not want to utilize the services of a City-run program. MPD also provides a network of Peer Support Officers, who receive specialized training in their support role but who do not provide counseling or therapy; their function is to assist officers with information and connect them with EAP providers for issues such as work or personal stress, financial concerns, or relationship difficulties.

Beyond the services available through the City's EAP, MPD has an extensive section in its SOP on officer-involved deaths and other critical incidents regarding "Officer Involved Critical Incident Aftercare." Recognizing that critical incidents are traumatic for officers as well as others, the SOP is intended to guide officers and those around them about the resources available to support officers following a critical incident. The policy is comprehensive and describes an impressive and thoughtful network of services.

In addition to a range of services available to an officer involved in a shooting or other critical incident – counseling with a mental health professional who specializes in Critical Incident Stress management services through the Employee Assistance Program and pairing with a Critical Incident Partner and a Peer Support Officer – the Department mandates consultation with a Trauma Specialist at regular intervals: within 24-72 hours after the incident; prior to the officers' return to work;[67] six months post-incident; one year post-incident; and annually for up to five years. Other than the fact that the meeting took place, the consultations are confidential and no information about the officer's mental health condition is shared with MPD.

[67] An officer involved in a critical incident is automatically placed on paid administrative leave until the criminal case has been concluded, the officer has completed all required counseling sessions, participated in a training scenario specially designed by Training staff to address the circumstances of the incident, and met with his or her chain of command to establish a Return to Duty Plan.

We find the level of attention to and support for an officer's mental and emotional well-being, particularly following a critical incident, to be exceptional in its thoroughness, detail, and appreciation for the ways officers' psychological health can affect future performance.

SECTION SIX

Risk Management Initiatives

Corrective Action in Response to Litigation

In the United States, the high risk and major potential consequences to police activity makes it a source of frequent litigation. Lawsuits are often generated in the aftermath of an officer-involved shooting, other use of force, arrest, or other police action, based on alleged violations of Constitutional rights, or the allegedly negligent acts of involved officers. In addition to resulting in potentially high liability, the litigation often generates a high degree of media and public attention.

When the litigation results in an adverse judgment or large settlement, one common reaction in law enforcement is to cite external factors – evidentiary rulings, jury instructions, makeup of the jurors, quality of the advocacy – in explaining the adverse result. The better response, in our view, is for any substantial payout to trigger additional internal review of the case and use it as an opportunity to readdress officer performance, training, policy, supervision, or other factors – including perhaps the quality of any previous internal investigation – that may have contributed to the outcome. Agency executives, city risk managers, and their lawyers need to step back from their role as advocates in order to identify individual performance or systems issues that may have weakened the jurisdiction's litigation position.[68]

In Madison, the Department should attempt to set aside disappointment or disagreement about an unwelcome case. Instead, it should formally and routinely attempt a reconsideration of litigation materials and an objective reassessment of the merits of the plaintiffs' allegations, the reasons the City insurers decided to settle the case, and/or the jury's verdict.

Progressive agencies effectively use a large settlement or adverse verdict as a cause for this sort of reflection and self-examination. Attorneys assigned to represent the City are solicited to help identify the thorny facts that supported the plaintiffs' theory, and that resulted in a determination that the risk of liability was too great to take to trial or else caused a jury to agree that the conduct of the

[68] We do not suggest that the attorneys in Madison or elsewhere should abandon appropriate avenues of appeal; only that the law enforcement agency should not let a pending appeal prevent it from learning valuable lessons from the litigation process.

officers was problematic.[69] Those facts form the potential basis of a "corrective action plan" that designed to address and remediate the identified individual performance issues. This happens through accountability, training, or debriefing as it pertains to individual officer performance, and through improved policy and procedure, equipment upgrades or other reforms to address broader systemic issues. Akin to "root cause analysis," the objective and introspective review is intended to identify what aspects of the incident and subsequent investigation resulted in liability and devise ways to remediate those issues to prevent future deadly force or other high liability incidents.

We urge MPD and the City to adopt this introspective approach to adverse litigation, particularly for cases emanating from officer-involved shootings and other cases in which the public's attention is understandably focused. Further, the Department and its attorneys should find appropriate ways to share the insights gained from their review with the public so that the community is aware of constructive steps the Department has taken in response to the result of the significant litigation payout.

> RECOMMENDATION 76: After a civil judgment or significant settlement involving MPD activity, the Department and its attorneys should convene a meeting intended to holistically review the incident and any insight learned from the litigation process itself, and should devise a public corrective action plan that addresses any policy, performance, training, supervision, investigative, and equipment issues identified during the course of the litigation.

Liability Insurance as a Potential Resource

When the City of Madison or its police officers are sued, its insurer often assumes at least part of the costs of representation and any liability payout. Like many jurisdictions in Wisconsin, the City of Madison belongs to a pool of jurisdictions that are represented by one insurance company. As with any insurance, in

[69] Ideally, after the litigation was over agency officials might even reach out to opposing counsel to learn ways in which the agency could improve its training, policy, and officer performance from that unique perspective. An advocate who has dedicated months to identifying weaknesses in the agency's response could provide valuable insight into how to avoid similar liability in the future.

exchange for a premium, the insured gets coverage for significant liability, but also loses control over litigation decisions, such as the decision whether to settle a case.

The nature of police work makes it a potential high liability target. We have mentioned there have been large recent payout awards in Madison[70] in the aftermath of officer-involved shootings. The insurance company pays the bulk of any such awards.

A growing trend among companies who provide liability insurance for cities and counties is to promote risk liability programs designed to improve systems in law enforcement. The idea is that proactive systems improvement will reduce future risk of liability. For example, one insurer informed its County clients that if it upgraded its jail conditions and protocols to certain minimal standards, it would provide them insurance at a reduced rate.

We have personal experience with forward-thinking insurance companies who see the value in proactive systemic review and reform. In two cities after a series of controversial officer-involved shootings, two different companies agreed to fund our independent review of the police departments. And in a third case, the insurance company agreed to pay for our review even though there had been no controversy that prompted the review.

Following the lead of other jurisdictions, City representatives should have regular talks with its insurance company to see to what degree it is amenable to funding independent reviews or audits, or reducing premiums in response to risk management initiatives.

> RECOMMENDATION 77: The City should have regular dialogue with its police liability insurer to examine what risk management initiatives might result in lower premiums or could be funded by the insurer.

[70] The adverse jury verdict in one case has yet to be paid, since it is currently the subject of a motion for new trial.

PART THREE:
USE OF FORCE

A law enforcement officer's authority to use force comes with a significant responsibility to use it, at a minimum, only when reasonably necessary. Certainly, officers must have authority to use force to protect themselves or others from harm. But any discussion about force issues should begin by addressing the need to eliminate not only those incidents where the force used was excessive and unjustified but also those incidents in which officers might have been authorized or legally justified in using force, but in which the force was not strictly necessary to accomplish their objectives. To reach the goal of eliminating force that may be legally defensible but avoidable requires a law enforcement agency to closely review its officers' uses of force and to evaluate whether those incidents involved interactions prior to the force that could and should have been handled differently by the officers.

Consistent with this viewpoint, our review of MPD's use of force policies and practices included an assessment of the way in which the Department investigates and evaluates officers' uses of force, a look at the Department's force training as well as the way it gathers and utilizes data on uses of force, and an appraisal of its force policies.

SECTION ONE
Reporting and Investigating Force

MPD policy on the use of non-deadly force[71] requires officers to document any use of force[72] in a case report that documents all of the officer's activities with respect to a given call, including all the circumstances surrounding a subject's arrest and any evidence gathered in support of potential charges. The officer's supervisor is required to review the use of force for compliance with MPD procedures and to document the force in the use of force database. The reports are then routed to the Department's Use of Force Coordinator – a sergeant position created in 2016 – for his review of the incident, including the identification of trends or training issues.

The inclusion of force documentation in the general case report is an understandable way to conserve time and other resources, but is potentially limiting in some respects. One document must serve dual purposes – providing the legal basis for prosecution of an individual while also providing a meaningful level of detail regarding the force officers used while effectuating his arrest. In many agencies we have reviewed, the force documentation sometimes slides into a position of secondary importance.

However, the way in which MPD officers write their case reports is exceptional. The level of detail in their descriptions of the circumstances justifying the force, their account of the type and manner of force used, and the organizational structure of their reports demonstrates a commitment to excellent report writing beyond what we see in other law enforcement agencies. This is a testament to the educational levels of Madison officers, the life experiences they bring to the position, training that emphasizes the importance of report-writing, and the Department's high demands and cultural expectations.

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[71] Though many of the principles we discuss here apply equally to the use of deadly force, a different policy, with a different set of requirements for reporting and review, covers the use of deadly force.

[72] The SOP requires reporting of any "physical force," as well as use of any of the listed weapons or devices – firearms, baton, chemical agents, handcuffs or other restraining devices. Absent from the list is Electronic Control Devices, which we assume to be a typographical oversight, because it is clear from our document review that officers are reporting their deployment and use of these devices. This gap should be rectified in the SOP.

The excellence of the officers' reports, however, generally is not matched by the investigation that follows. The person on whom force was used is not generally interviewed regarding the force. There is no documentation by officers who witnessed the force but who otherwise have no cause to write a supplemental report, and officers generally do not seek out or interview civilian witnesses about the force. If there is dash cam, surveillance, or other video available it may be collected and attached to the report, though there is no policy requiring this.

One other piece we consider to be important to a full and accurate accounting of force generally was missing from many MPD reports: officers who witness force are not required by policy to report what they saw. In many cases we reviewed, officers who witnessed but did not use force documented their observations on a supplemental report. However, officers generally only wrote these supplemental reports when they had some reason apart from witnessed force to do so, such as participating in the booking of evidence or performing a drug test.

> RECOMMENDATION 78: MPD should make clear through policy and training that an officer who witnesses another officer use force is required to report it and document his or her observations in a supplemental report.

In addition, for uses of force within certain categories,[73] MPD should consider adopting a more robust paradigm – employed by many law enforcement agencies – of preparing a separate investigation package requiring minimal standards of investigation. These would include requiring a field supervisor to do the following:

- Interview individuals on whom force was used;
- Interview civilian witnesses to the force and the events leading up to it;
- Ensure that all officers who participated in or witnessed the force incident have prepared thorough reports with an account of what they did or saw;
- Obtain medical records of any injuries or treatment to either the person on whom force was used or the involved officer(s);
- Secure photographs documenting any injuries, or the absence of injuries;
- Search, retrieve, and attach any video or audio recordings of the incident;

[73] For example, strikes to the head, use of an ECD, baton, or other impact weapon, or any force that results in observable injury.

- Identify and attempt to resolve evidentiary discrepancies through additional investigation where possible.

Such an investigative model would enable supervisors reviewing the force to engage in a more meaningful review of the entire incident, as discussed below.

> RECOMMENDATION 79: MPD should amend its force reporting protocols so that, for certain categories of force, supervisors are required to conduct a separate investigation meeting basic investigative standards sufficient for a thorough and complete review of the incident and the events leading up to it.

SECTION TWO
Reviewing Uses of Force

It is essential that a law enforcement agency critically review and evaluate each force incident in order to determine whether the use of force complies with an agency's expectations as set out by policy and reinforced in training. An effective inquiry, however, does not end there. Law enforcement should also assess force incidents for potential issues with performance, training, tactics, equipment, policy, or supervision. This requires a commitment to comprehensive fact-gathering and dispassionate review. Such a holistic review of force incidents will increase the tactical and decision-making capabilities of officers and promote accountability.

Currently, MPD officers verbally report their uses of force to a sergeant, and then route their written reports to that same supervisor, who is responsible for entering the incident into the Department's use of force database. That entry includes a good bit of factual data – location, date, weather and lighting conditions, and type of injuries, for example – as well as an incident summary.

The use of force report and associated case reports are then routed to the Use of Force Coordinator. His job is to ensure that the force has been fully and accurately entered into the database and, more broadly, to identify any concerns with officer performance and to detect trends and potential areas for improvement in training. If he notes a concern with a particular incident, he has the discretion to conduct informal counseling with the officer, have the officer attend additional training, discuss the force with the officer's supervisor, or send the matter to Internal Affairs. In fact, he reports that officers have come to see him as a resource, and have on occasion requested to debrief with him the particulars of a force incident in which they were involved.[74]

The Use of Force Coordinator also meets every other week with the Chief, Assistant Chiefs, and the Professional Standards & Internal Affairs Captain to provide a synopsis of each force incident from the prior two weeks and discuss any notable concerns arising from those incidents.

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[74] The Department wisely chose as its Use of Force Coordinator a sergeant with considerable experience on the Training Team and the expertise and credibility that comes with that experience.

The introduction of the Use of Force Coordinator position and the force reporting database in the last two years is a significant step in the right direction, but all of the review and analysis undertaken by the coordinator remains informal. There is no documented review process that concludes whether a use of force is within policy, let alone one that ensures supervisors and executives are meaningfully examining each incident to identify performance issues – both exemplary and otherwise – as well as any other concerns about tactics, training, equipment, supervision, or compliance with the de-escalation policy.

In addition to ensuring a much more robust investigative process as noted above, MPD should modify its policies and protocols to require a more exacting review of force incidents. First-level supervisors should prepare a thoughtful narrative explaining their preliminary conclusion about whether the force used was consistent with MPD policy. Well beyond that baseline conclusion, however, supervisors charged with reviewing the incident should know the answers to a number of questions before concluding the force was within policy and in order to determine whether alternative strategies could have been deployed short of force. These questions include:

- What were the officer's words, gestures or actions prior to, during, and after the time he or she used force?
- Was there any relevant prior "interaction" or "relationship" between the officers using force and the person against whom force was subsequently used?
- What was the physical or mental condition of the person against whom force was used?
- Was there a reasonable opportunity to safely de-escalate the incident in order to lessen the likelihood of the need to use force or to reduce the level of force necessary? If so, did the officer using force attempt to do so? If not, what was the reason?
- Was there a reasonable opportunity to safely use tactical options such as increasing time and distance, using cover and concealment, using or creating barriers, calling and waiting for additional personnel, etc., which might have lessened the likelihood of the need to use force or reduce the

level of force necessary? If so, did the officer attempt to do so? If not, what was the reason?

- What was the underlying offense, infraction, or conduct that precipitated the initial contact and the subsequent use of force?
- Was the force used reasonable when compared to the threat posed and all other surrounding circumstances?
- Was there a reasonable opportunity to safely use a weapon, device, instrumentality, or force technique that might lessen the force needed to overcome the threat posed? If so, did the officer attempt to do so? If not, what was the reason?
- Once the use of force commenced, was it reasonably decreased or stopped as the level of resistance/threat/harm decreased or stopped?
- Was there any evidence indicating that the force used by the officer was motivated in whole or in part by any improper purpose such as, but not limited to, punishment, retaliation, discrimination, bias, improper coercion, infliction of unnecessary pain, harassment, ridicule, abuse or any other improper reason?
- Did involved and witness officers notify a supervisor of the force incident in a timely way?
- Did involved and witness officers promptly write reports that thoroughly answered all relevant questions about the incident?
- Did the involved or witness officers have access to any video of the incident prior to writing their reports?
- Were the officers' written reports consistent with each other, and with any video of the incident? If not, account for and/or explain these inconsistencies.
- Were the officers' written reports consistent with witness interviews? If not, account for and/or explain these inconsistencies.

- Was the person against whom force was used provided prompt medical assessment and care?
- What was the nature and extent of any injuries to the person against whom force was used?
- What was the nature and extent of any injuries sustained by the involved officer(s)?
- Were the injuries noted and/or documented by medical providers consistent with the level of force reported?

Prompting supervisors tasked with reviewing force at all levels to answer these questions[75] allows the Department to scrutinize the incident through different prisms, with an eye toward maintaining accountability while ensuring that every incident is seen as a learning opportunity. The Use of Force Coordinator's weekly meetings with the Chief may regularly address these questions, but any remedial measures coming out of these discussions are not documented as part of the force review, making it difficult to demonstrate that command staff is attentive to force incidents for purposes of transparency and from a risk management and civil litigation perspective.

> RECOMMENDATION 80: MPD should adopt policy requiring a supervisor to evaluate whether each use of force was within policy, as well as compliance with any other policies implicated such as the foot pursuit or de-escalation policies, with a supporting analytical narrative that also demonstrates a holistic review of all the circumstances surrounding the use of force.

In addition to adopting a more rigorous paper review for supervisors with regard to every use of force, we also recommend that certain kinds of significant force incidents be directed to a panel of command staff for review. While we believe the Department is best positioned to determine the proper scope, structure, and

[75] Other agencies have successfully employed detailed checklists that specifically lay out the Department's expectations for investigation and review and help ensure uniform and thorough coverage of the fact collection and review process, prompting supervisors to ask the right questions and confirm that the final force review package provides an answer at each level of investigation and review.

title for its "Force Review" panel, there are some basic features we believe are crucial. First, MPD should clearly define which categories of incidents will be reviewed, and the review should be automatic and non-discretionary so that officers understand the scrutiny to be routine and not the result of any initial judgment that the force was problematic.

Also, the panel should review the reports prior to the meeting so they have some familiarity with the incident. At the meeting, the supervisor responsible for conducting the investigation should present the evidence and identify any preliminary issues emanating from the investigation. The members of the panel should discuss the incident and determine whether the force was consistent with policy, training, and MPD expectations.

As importantly, the panel should consider all aspects of the force incident to identify ways in which the tactics, supervision, and post-incident handling might be improved. The panel should develop an action plan in which remedial measures are identified and personnel are assigned to implement them. The action plan should consider what and how information will be conveyed to the involved officers about the panel's assessment and what information should be communicated to officers Department-wide so that lessons from the incident can be effectively disseminated. Finally, the panel should critique and review the thoroughness and objectivity of the force investigation and, if need be, return the investigation for necessary follow up. To assist in identifying issues and developing remedial plans, training staff should be invited to the meeting so that they can opine about the force application and any tactical concerns.

> RECOMMENDATION 81: In evaluating force incidents, MPD should go beyond a determination of whether the use of force met a Constitutional standard or was in consistent with Department policy, to also identify any tactical or other performance issues, and determine whether additional remedial action – such as discipline, training, or debriefing – is appropriate.
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> RECOMMENDATION 82: On selected force incidents, MPD should convene a panel to roundtable the incident, to identify training, policy, supervision, and equipment issues, and to develop an appropriate after-action plan.

Emphasis on De-Escalation

Following the 2016 fall in-service training, the Department put a renewed emphasis on documenting officers' efforts to de-escalate situations that could, and sometimes, do result in a use of force. Many of the reports we read prior to that may have included a description of actions officers took that could be classified as "de-escalation," but more recent reports we've reviewed spell it out more specifically, with reference to the term of art and sometimes a specific heading relating to de-escalation.

The fact that officers so fully document their encounters gives the Department two important opportunities. First, the Department should continue to look for ways to share with the public its officers' specific efforts at de-escalating difficult situations, whether through traditional media outlets, blog posts, or other social media outreach. We acknowledge the Department does make some such efforts, and also realize that the public's attention is more easily drawn to tragic outcomes than to success stories. Nonetheless, MPD should continue its efforts to educate and build good will surrounding its officers' positive outcomes.

Second, the Department can use officers' reports to positively reinforce conflict resolution skills and affirm officers who have the capability and temperament to handle difficult situations without resorting to force. MPD should recognize those officers in regular performance evaluations and through "commendable restraint" citations. The Department should also promote those deputies as peer role models and draft them for training and briefing assignments, to reinforce the value the Department places on their acumen, skill, and approach to their work.

The Department also should publicly showcase the work of such officers. At its most recent annual awards ceremony, MPD recognized officers who engaged in charitable tasks, successfully intervened in suicide attempts, and rescued persons suffering from a drug overdose. While lauding such activity is commendable, MPD should also strive to identify and commend officers who practice de-escalation or who employ problem-solving techniques to effectively address conflict without (or with minimal) force. In the past, the Medal of Valor has been awarded officers who faced life-threatening situations and used deadly force. There is a belief held by some in the community and within the Department that officers who are in situations where deadly force would be justified but who successfully defuse the crisis without firing a weapon will be criticized internally

for not using force. An effective counter to that belief would be to award the Medal of Valor to a courageous officer who held his or her fire and effectively de-escalated a situation.[76]

> RECOMMENDATION 83: MPD should identify and publicly commend officers who practice de-escalation techniques and problem oriented policing.

[76] We know there are numerous examples of such valorous conduct, from accounts we have read in various news outlets, conversations we have had with many officers, and even from first-hand experience during a ride-along.

SECTION THREE
Use of Force Training

As with the rest of the Academy and basic in-service training, much of the basic curriculum for MPD force training is mandated by the Wisconsin Department of Justice Law Enforcement Standards Board.[77] The classroom work includes instruction on a range of topics, from handcuffing and foot pursuits to decision making and use of the Taser. Much of the force instruction falls under the umbrella of Defensive and Arrest Tactics, defined by the state as a "system of verbalization skills coupled with physical alternatives." MPD has some discretion in how the mandated curriculum is organized and presented, however, and these factors are as or more likely to affect the success of the training program than the actual written course outlines.[78]

In our view, the most vital part of use of force training is in the students' opportunity to practice their skills in realistic encounters. Officers who do not experience in training what it is like to have someone actually resist or fight them, or who have not experienced it often enough, do not build the confidence necessary to effectively resolve these situations in the field. Lacking confidence in their abilities to successfully employ a trained technique – hand strikes or pressure points, for example – when they encounter real resistance from an actual suspect, they may panic, resort to untrained control methods, or apply a level of force that could be deemed excessive.

In addition to building confidence in an officer's ability to apply force in accordance with training when necessary, the training curriculum must provide students with the opportunity to practice decision making around when and what type of force to use. The MPD Academy presents students with a number of realistic scenarios in which force may or may not be necessary, and for which students must decide when and how to engage with the role-playing "suspects."

MPD's "student-centered" approach to training was particularly evident in the training scenarios that we observed. Once the scenario had concluded, trainers conducted a debriefing with each student. Rather than tell the student what he or

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[77] MPD's Use of Force Coordinator is a member of this Board.

[78] For example, we have seen excellent course outlines in use in other agencies, but then learned when a given trainer presented the material, he prefaced it with a comment about how he was only teaching it because higher-ups said he had to, completely undermining its value.

she did "right" or "wrong," the trainer began by asking each student, "What did you think of this scenario?" or, "Is there anything you would have done differently?" The goal is to get students to think critically about their own performance and identify areas for improvement. It was impressive to watch students (who were about halfway through their Academy training at the time) grapple with this question as the trainers guided them through the analytic process. For students who struggled with a given scenario, trainers asked them if they wanted to try again. On the days we observed, they all accepted this opportunity for additional practice, and role players varied the scenario enough that the do-over was a meaningful exercise.

Among the objectives of these debriefings is to get officers to internalize the student-centered approach, so that as they write a report about their activities, including use of force, they articulate not just what they did, but why they did it. The high quality of the officers' report writing that we discuss above is some evidence that officers have embraced this training approach.

Indeed, the ultimate measure of training's effectiveness is how well its central premises sink into officers' mindsets. It is not an easy concept to judge, but one potential way to assess whether force training has achieved "buy in" with officers is to look at how they report and describe their uses of force. As we discussed above, we were impressed by the cogent details generally included in officers' incident reports. The move toward describing de-escalation efforts utilized prior to a use of force, in particular, is some indication that officers believe the de-escalation training they receive has a meaningful impact on their work.

However, the results of our internal survey of officers[79] suggest that officers do not universally believe that the de-escalation strategies they learn in training have applicability in real-life encounters. More than two-fifths of officers who responded to the survey did not believe that their training assisted in using lower levels of force, though the overwhelming majority (95%) agreed that MPD's

[79] The survey, entitled "Patrol Officers' Occupational Perceptions: The Madison Police Department" was designed at our request by criminologist Dr. Eugene Paoline III of the University of Central Florida. It was administered online in November of this year with support and facilitation by MPD command staff – for whose assistance we are grateful. Approximately 68% of eligible patrol officers participated. Dr. Paoline has shared his initial findings with us for purposes of this draft. We also intend, under separate cover, to share his final report – which includes both his analysis of specific question categories and the accompanying statistics that support it – with both the Department and the public.

trainers were effective in communicating core principles of use of force de-escalation. These results are interesting, and worthy of further analysis and ongoing assessment.

De-Escalation Training

President Obama's Task Force on 21st Century Policing recommended an emphasis on de-escalation in that policies and training on use of force. The consent decrees that a number of law enforcement agencies entered into with the Department of Justice during the Obama administration all contained provisions regarding training on de-escalation principles. In this context, and in the wake of some high profile, controversial use of force incidents, MPD proactively engaged its officers on de-escalation tactics by devoting the fall 2016 in-service to the subject.

The in-service training did not introduce new concepts to MPD officers, but rather assembled and reiterated training they had received in different forums throughout their careers. The training reinforced four core tenets: backup; time and distance; cover and concealment; and professional communication. While de-escalation has become a sort of buzz word in policing circles, in truth the tactics can be as simple as the officers' ability to maintain a respectful, non-challenging and non-threatening demeanor while talking to the subject from a safe distance.

To prepare the curriculum for the eight-hour training, MPD sent one of its trainers to Seattle to meet with the Seattle PD training staff and observe their de-escalation training, which had been vetted by DOJ and the federal monitor overseeing that city's consent decree. The resulting MPD in-service training was modeled on the Seattle training, with special emphasis on MPD-specific issues, particularly the new or newly-revised SOPs dealing with backup officers assigned to calls for service, de-escalation, and foot pursuits. The training staff's laudable decision to look outside its own Department to learn from what works for others is evidence of an agency attempting to maintain the highest standards based on the most current research and knowledge. In order to best serve its officers and the public, a law enforcement agency needs to continually evaluate the effectiveness of its own training programs and then look to the practices of others for guidance.

RECOMMENDATION 84: MPD should regularly evaluate its use of force training to make sure it continues to be consistent with best practices, maximizes its ability to meet the demands of the Madison community, and is considered by officers to be effective at preparing them for real-life encounters.

Learning from Critical Events

As we have noted elsewhere, the overall strength of a training program can become irrelevant in the wake of a single incident that erodes trust in the Department and its systems. It is critical that law enforcement is willing to reevaluate its training precepts following a critical incident and to engage with officers regarding lessons learned from the incident. One such precept that came to our attention during the course of our study is the reactionary gap principle.

The reactionary gap principle has to do with concepts from biomechanics that provide insight on how quickly a police officer can react to a perceived threat. The findings of various studies indicate that if an officer waits until a firearm is pointed at him or her, the officer will have insufficient time to respond with deadly force before the suspect pointing the gun can fire at the officer. This tenet has significant implications for officer safety and field tactics.

The way the principle is presented in training can have significant implications for the way officers perceive and respond to threats. Some agencies use the action/reaction principle to teach officers that if they perceive a firearm, they should not wait until the gun is pointed at them to engage and deploy deadly force. In fact, we have been aware of scenario-based training where officers observe the display of a firearm and have been criticized for waiting too long to deploy deadly force. Through this type of training, officers may be encouraged inadvertently to use deadly force more frequently in order to overcome the reactionary gap principal. If that is the take-away from training on reactionary gap, however, the instruction has fallen short.

Understanding the principle and the limitations on officers' ability to respond to a firearm threat, a more comprehensive and officer safety based training curriculum will emphasize the importance of maintaining or increasing distance and seeking cover when confronting an armed or suspected armed individual.

The scenario-based training introducing the reactionary gap principle in the MPD Academy is a crucial learning moment for students. While the Academy teaches the core tenets of time and distance, cover and concealment throughout its months-long training, it may not adequately link these concepts to the scenario designed to teach the action/reaction principle. As a result, at least some officers have walked away from the scenario with the unfortunate notion that they are expected to use deadly force whenever they see a gun in a subject's hand.

The Department should reevaluate its scenario training on this point to ensure that students take away the important message about officer safety – when addressing a subject who is known or believed to have a gun, it is incumbent on the officer to maintain or create distance and seek cover or concealment whenever possible.

> RECOMMENDATION 85: MPD should reevaluate its training regarding the implications of the reactionary gap principle, focusing on principles of officer safety such as cover and distance to ensure that officer tactics and deployment minimizes the need to use deadly force.

SECTION FOUR
Data Issues

Prior to January 2011, MPD did not maintain any data regarding when or how its officers used force. That is not to say officers did not report their uses of force, but they simply included the information on their case reports and the Department did not log or tally it in any way. If one queried the Department about how many times its officers used force in, for example, 2009, the only way to get an answer would be for someone to go through every incident report written in that year to see if the author recorded force.

In 2011, anticipating that someone may one day ask for its force numbers, the Department began requiring officers to fill out a use of force form that was reviewed by a supervisor and entered into a rudimentary database. In 2013, MPD eliminated the paper form and implemented a new practice where officers and supervisors would jointly enter information directly into a different database that turned out to be a significant downgrade from the original. Neither of these methods produced reliable data. Though a group of defensive tactics instructors was tasked with a quality assurance role, matching reported uses of force with officers' case reports to ensure that information had been accurately entered into the database, some number of force incidents inevitably fell through the cracks and never were included.

In June 2016, MPD introduced a new software system that allows for far more comprehensive data collection and a range of statistical reports and analytical tools that was a significant upgrade for the Department.[80] Officers route their incident reports to their sergeants, who are required to enter the details of the incident into the database. All of these are routed to the Use of Force Coordinator, who ensures that data is entered properly, and cross-checks against the Departments records management system to confirm that all uses of force are being appropriately counted. While there are some remaining glitches, the Use of Force Coordinator is aware of them and is compensating for these potential areas of concern while searching for a fix.

The Use of Force Coordinator continues to audit case reports to ensure that officers and sergeants are appropriately entering uses of force into the force

[80] The Department entered records from its prior system beginning January 1, 2016, so that it would have a complete year of data.

database. Indeed, following a conversation with our team, he took the extremely proactive step of auditing all reports detailing an arrest for resisting arrest or obstructing, charges that frequently accompany a use of force. He continues to find some errors in the way in which people record force and, more notably, to find some uses of force that are reported in the general case report, but not recorded in the database. He corrects these errors, and informally counsels those who fail to properly document the force. These omissions are understandable, given the relative newness of the recording requirement, and the number of errors has been steadily diminishing over time. At some point, however, the Department needs to elevate its response beyond informal counseling to documented counseling to ensure that officers and sergeants treat the recording requirement with appropriate seriousness.

> RECOMMENDATION 86: MPD should consider when it is appropriate to begin employing documented accountability measures for officers and sergeants who fail to comply with the requirement for entering force incidents into the use of force database.

The current quality of the data available on MPD uses of force is quite good. Most importantly, the Department posts its force data on its website, consistent with recommendations from President Obama's Task Force on 21st Century Policing. The information, updated every quarter, includes total number of force incidents, and then broken down by type of force, officer demographics (race and sex), "citizen"[81] demographics, and then further by officer-to-citizen categorization.[82] The published numbers also include data on whether alcohol or drugs were a factor.

We recommend a few additions to these regularly published numbers to help the Department identify any trends in force usage. First, it would be helpful for Department managers to see where and when across the city force is used most frequently. Breaking the force numbers down by district and shift would allow analysts to identify any problem areas if they arise and as they develop. The data

[81] The Department should consider changing this nomenclature, as not all those on whom force is used are "citizens."

[82] As discussed elsewhere, we recommend that the demographic data collected be regularly analyzed with respect to identifying any racial disparity trends with regard to use of force.

could be synced with crime data in a way that would help broaden the Department's understanding of the aggregate data.

> RECOMMENDATION 87: MPD should further break down its published use of force data by district and shift to ensure that Department leaders are focused on where and when officers use force most frequently.

SECTION FIVE
MPD Use of Force Policies

The Madison community has become increasingly interested in the policies that govern conduct of the Madison Police Department. That increased focus culminated in the City's Common Council issuing a number of recommendations to the Chief requesting changes in the Department's use of force and related policies. To the Department's credit, after some initial concern and resistance, MPD implemented the recommended changes.

The increased interest by some in the Madison community about how its police department conducts business is part of a national trend. Traditionally, development of police policy was largely left to the agency to handle as it saw fit. However, cities throughout the country have seen its residents asking questions and making demands about their police department's policies and practices, particularly regarding the rules governing use of force.[83]

In response to these public demands, some jurisdictions have assigned civilian Commissions to review and approve any changes in police policy. Some have proactively sought input from its community before enacting any major changes. Police agencies with independent auditors or other oversight bodies have regularly solicited participation from them in developing policies.

The nature of the public debate over the Common Council's authority to direct the MPD Chief to enact or amend certain policies emphasizes the need for MPD to be more responsive to the community's concerns regarding the particulars of its policies. The Department has commendably followed the trend of making its Code of Conduct and Standard Operating Procedures publicly available on its website,[84] but does not actively solicit community input when it considers changes to those documents.

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[83] President Obama's Task Force on 21st Century Policing also recognized the value of community involvement and recommended such: "In order to achieve external legitimacy, law enforcement agencies should involve the community in the process of developing and evaluating policies and procedures."

[84] Policies involving some sensitive police tactics are kept from public purview, which is inconsistent with the 21st Century Policing Task Force Recommendation and the overarching interests in transparency. Discussed elsewhere, we recommend that MPD revisit this decision to keep some policies secret.

MPD should join the growing number of police agencies who proactively seek community input on any changes in policy. Prior to finalizing any policy, MPD should publicly post the policy and provide an opportunity for the community to weigh in and offer any suggestions. For those policies that are of particular public interest or address a special expertise, MPD should form a working group of experts within and outside the Department to develop the policy from the ground up. And when the Independent Police auditor position is created, MPD should provide him or her any potential policies early in the drafting process for input. Providing an opportunity for the Madison community to weigh in will help MPD build legitimacy, community support and acceptance of its practices, and will result in a more transparent process and a final product improved by virtue of the fact that it addresses the public's concerns. However the policy ultimately turns out, the dialogue and community participation will allow a vetting of the issues in a public arena, consistent with the tradition of American rule making.

> RECOMMENDATION 88: MPD should proactively seek input from City stakeholders and the public before completion and implementation of any new policies or changes to its existing policies.

Principles Guiding the Use of Force

A principal policy recommendation from Common Council in May 2017 was for the MPD use of force SOPs to explicitly recognize an officer's duty to preserve life. After some legal wrangling over Council's authority to direct policy change, in July the Department changed the "Purpose" statement at the beginning of its Deadly and Non-Deadly Use of Force policies to include this statement: "The protection and preservation of all human life – including the lives of individuals being taken into custody – is the Department's fundamental objective and the primary duty of all MPD employees."

The Department's initial resistance to the policy change was not based on objection to the principle. Rather, MPD believed the new language was unnecessary because its Code of Conduct and force policies discussed the dignity of all people and the value of human life, and because the duty to protect life is ingrained in its training philosophy.

Regardless of how well established the duty was in the Department's core values, articulating those principles at the very beginning of its force policy is a powerful reminder to officers as well as an important statement to the community. The language added to the policy in July 2017 was a positive step, but we believe the Department would be well served by some additional refinements to its use of force policies, both in its general statement of principles and in the procedures governing some specific tactics and force mechanisms.

Tactical Alternatives to Force

The current "Purpose" statements at the beginning of both the deadly and non-deadly force policies states, "The Department is committed to resolving conflicts through the use of communication skills, crisis intervention and de-escalation tactics, when feasible." This provision could be strengthened and clarified, to further reinforce the idea that the Department's interest is to reduce incidents of force to a minimum. For example, instead of qualifying the statement with "when feasible," the policy could be modified to include language such as:

> The Department is committed to resolving conflicts through the use of communication skills, crisis intervention and de-escalation tactics. When time, circumstances, and safety permit, officers should consider these alternatives to using force.

Another recommendation from Common Council was for MPD to integrate de-escalation practices into its force policies. MPD did so by creating a heading in each policy specifically directing officers to utilize de-escalation tactics consistent with the SOP on De-Escalation. And well prior to adoption of the recommendations from Council, MPD had devised a back-up policy that emphasized the tactical advantages of waiting for backup prior to engagement, a key principle of de-escalation.

We recommend that MPD go even further to emphasize de-escalation principles in its SOPs. In some of the recent officer-involved shootings in Madison, and frequently among the over 600 shootings we have reviewed in our tenure, a common question is whether the involved officer's actions precipitated the need to use deadly force by placing the officer in an unsafe position. Police training universally teaches that for purposes of officer safety, time and distance is on the officer's side. When an officer leaves cover, closes distance, or is positioned too

close to a potential threat in order to more assertively engage a suspect, he or she may be constrained to use force – even deadly force – when a more safely positioned officer would not have.

This important principle is a common theme of MPD force training. We recommend the Department reinforce that training by making it a part of its use of force policies, with language adopted from a major city police department such as:

> Officers shall ensure their actions do not precipitate the use of deadly force by placing themselves or others in jeopardy by taking unnecessary, overly aggressive, or unsafe actions. It is often a tactically superior police procedure to withdraw, take cover or reposition, rather than to immediately use force.

When discussion commenced on modifying MPD's use of deadly force policy, one of the Department's initial responses was that it was unable or unwilling to modify its policy beyond the *Graham v. Connor* standards. Those standards relate to a 30-year old Supreme Court case that adopted an "objective reasonableness" standard to judge the use of force by a police officer.

Progressive police departments have recognized that the *Graham v. Connor* standard provides a Constitutional minimum for when force can be reasonably used. There is no prohibition in the Constitution, or anywhere else, to providing a more restrictive internal standard for when force is to be used. In fact, MPD has developed policies, like those governing use of Electronic Control Devices, that place greater restrictions on the use of force than the "objective reasonableness" standard.

We expect that MPD has moved past its initial insistence that it must hold to the *Graham v. Connor* standards and that it has flexibility to adopt more stringent standards to further guide officers and help keep officers and the community safer by reducing the number of force incidents. However, because of the earlier public pronouncements to the contrary, clarification of the Department's philosophical shift in this arena would help eliminate any residual confusion.

> RECOMMENDATION 89: MPD should modify its use of force policies to more clearly instruct officers on the duty to employ tactical alternatives to force, and to make clear the

Department's expectation that officer follow tactical principles of officer safety.

RECOMMENDATION 90: MPD should publicize to its officers and its community its commitment and willingness to go beyond the Graham v. Connor standards when it further refines its policies relating to the use of force.

Electronic Control Device Use

MPD's guidelines for deploying Electronic Control Devices (ECDs) – Tasers – are contained in the SOP for use of non-deadly force. An ECD fires two small electrodes that are intended to penetrate a subject's skin like probes or darts, but remain connected to the weapon by wires. The darts deliver an electric current and, when both are fully embedded, cause incapacitation of the affected muscles. It also causes considerable pain and involuntary muscle contraction that ends after an standard five-second initial cycle. Officers can apply additional cycles by redeploying the trigger on the Taser and can lengthen the standard cycle by keeping the trigger engaged. A Taser's incapacitating effect often causes a subject to fall to the ground.

Commendably, the Department's ECD policy includes some features we frequently find absent or lacking when we review other agency's policies. For example, the policy prohibits deploying a Taser in drive stun mode, in which the device makes direct contact with a subject without the probes. This causes localized pain but generally not incapacitation. In this mode, the Taser often is used as a method of "pain compliance" in which the goal is to gain control of a subject by compelling him to surrender to stop the pain. Despite the fact that a joint project of the Police Executive Research Forum (PERF) and the U.S. Department of Justice's Community Oriented Police Services (COPS) questioned the value of using an ECD in drive stun mode in 2011,[85] many agencies still

[85] Police Executive Research Forum and Community Oriented Police Services of the U.S. Department of Justice, Electronic Control Weapons Guidelines (2011).

permit the weapon's use in this manner. MPD should be credited for its prohibition.[86]

The MPD policy limits ECD usage to overcome "violent or assaultive behavior or its threat," a provision that again is more progressive than many agency's guidelines, which permit Taser use in response to a "resistive" subject and is more in line with recent jurisprudence requiring a higher level of threat before an ECD is constitutionally permitted. However, the MPD policy goes on to authorize ECD use "if the officer reasonably believes that the subject poses an articulable threat of harm to an officer or to another person." There is no further definition in the policy to what is meant by this language. This provision unfortunately swallows the first, more limiting, one, and could be used to justify Taser deployment in many more circumstances than those involving a violent or assaultive subject. The use of force reports involving Tasers we reviewed did not reveal a concerning pattern of overuse of the device, and officers seem to be appropriately limiting their deployment.[87] Nonetheless, the Department should tighten its policy language to prevent unintended overuse.[88]

> RECOMMENDATION 91: MPD should amend its Electronic Control Device Use SOP to limit ECD use to circumstances involving violent or assaultive subjects, or to prevent subjects from harming themselves or others.

The SOP expressly prohibits ECD use (absent exigent circumstances[89]) in a list of circumstances, including handcuffed subjects, fleeing subjects, and those operating a motor vehicle. While the prohibition is commendable – and something we often recommend, because many agencies only caution against such use – the list has a few notable omissions, including:

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[86] MPD trains officers to use drive stun mode only to complete the electronic circuit when a single probe has successfully made contact with an individual and the other is either ineffective or dislodged. This usage is expressly approved of in the 2011 PERF/COPS Guidelines.

[87] The policy also appropriately permits ECD use: "To control persons in order to prevent them from harming themselves or others."

[89] It is hard to imagine an "exigent circumstance" that would make it reasonable to use a Taser on a handcuffed individual or one using a motor vehicle. The better course would be to eliminate the term "exigent circumstance" from the policy.

- Pregnant women;
- Elderly individuals;
- Obvious juveniles;
- Individuals on stairwells, rooftops, or other elevated positions (who could fall if incapacitated by the Taser application); and
- Bicyclists (who, as with those operating a motor vehicle, could crash if incapacitated).

The MPD policy also is silent regarding multiple simultaneous uses and prolonged or repeated uses of the Taser (with the exception of requiring medical evaluation). This permissiveness is at odds with recent studies of Taser use – including a 2011 report by the National Institute of Justice[90] – that caution against prolonged or multiple uses of Tasers or simultaneous use of multiple Tasers on a single subject because of the significantly increased health risks. In addition to neglecting to place limits on multiple or prolonged uses, the MPD policy also does not require the officer, before engaging in additional Taser deployments, to assess whether the subject continues to pose the threat that justified the initial Taser use. We recommend the Department tighten its existing Taser policy to address these concerns.

Finally, the SOP permits trained officers to remove Taser probes unless they are embedded in a sensitive area, and to proceed with arrest procedures without getting a subject medically cleared, except in defined circumstances. More common practice consistent with best principles of risk management and medical care is to require medical clearance for all subjects on whom an ECD has been used, and to have any embedded darts removed by medical personnel.

> RECOMMENDATION 92: MPD should modify its ECD guidelines to prohibit ECD use on women obviously pregnant, elderly individuals, obvious juveniles, individuals on stairwells, rooftops, or other elevated positions, and bicyclists.
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> RECOMMENDATION 93: MPD should modify its ECD guidelines to require officers to re-assess the threat posed by an individual prior to any successive ECD application.

[90] National Institute of Justice, "Study of Deaths Following Electro Muscular Disruption," (May 2011).

RECOMMENDATION 94: MPD should modify its ECD guidelines to preclude officers from deploying more than three ECD applications on an individual, or a prolonged single application lasting longer than five seconds

RECOMMENDATION 95: MPD should modify its ECD guidelines to preclude multiple officers from simultaneously deploying their ECDs on an individual.

RECOMMENDATION 96: MPD should modify its ECD guidelines to require medical clearance for all subjects on whom an ECD has been used, and to have ECD darts removed by medical personnel.

Foot Pursuits

When a person runs from an officer who is attempting to detain him, the officer's instinctive reaction may be to immediately give chase and catch the suspect at all costs. This common scenario, however, creates untenable safety risks to officers, the public, and subjects being pursued.

The dynamic of most foot pursuits is inherently unsafe for the officer. The suspect determines the path of the pursuit. If the suspect is armed, he can draw the officer in and then turn and shoot the pursuing officer before the officer has an opportunity to react. Even worse, if the armed suspect has an opportunity to turn a corner, jump a fence, or enter a building, causing the officer to lose visual contact, the suspect then has a tactical advantage and can ambush the pursuing officer. Running with an unholstered gun places an officer in a better position to react to an ambush, but creates additional problems, including the possibility of an accidental discharge and hampering the officer's ability to engage in a hand-to-hand fight with the suspect. A long foot pursuit can leave an officer (who is weighed down by the necessary gear on his or her belt) winded, and the exhaustion can compromise the officer's tactical skills and decision-making ability.

The dynamic is also unsafe for the public and the suspect being pursued, as the heightened sense of danger faced by officers in this scenario may cause the officer to perceive any ambiguous move by the person being chased – such as grabbing at

his waistband – to be an indication that the suspect is armed. Because officers are trained to anticipate lethal threats, the stress of a foot pursuit and insufficient distance between the officer and subject sometimes causes an officer to use deadly force in response to perceived aggression when, in fact, it turns out that the person being chased was not armed after all.

Guidance to police agencies and their officers on how to respond in these situations has evolved over the years, and many agencies – MPD included – have adopted some form of policy in an attempt to mitigate these risks. The MPD policy provides comprehensive guidance to officers on the dangers of foot pursuits, factors to consider in deciding whether to initiate or continue a pursuit, and how to balance officer safety considerations with the objective of apprehending a suspect.

It is important for officers and members of the public to remember that the decision to not engage in a foot pursuit does not equate to letting the "bad guy" go. Rather, it is an acknowledgment that there usually are safer, smarter ways to apprehend suspects than chasing them down. As the MPD policy and training emphasizes, an officer who is chasing a suspect and properly communicating can continue to follow while coordinating the response of fellow officers to establish a containment of the area, attempting to trap the suspect within a perimeter. Often, officers have identified the person being chased, and rather than continuing a dangerous pursuit, can use available resources to locate the suspect at a later time.

The Department's SOP governing foot pursuits covers most of the pertinent concerns, but there are a handful of provisions missing from what we consider an ideal policy.[91]

- The SOP states it is the pursuing officer's responsibility to notify dispatch of pertinent facts, "if possible." Better practice is to require officers to terminate a pursuit if they cannot communicate with dispatch, or lose radio contact for any reason.
- Officers are instructed to consider the availability of backup when initiating a pursuit, but there is no prohibition on solo pursuits, or, at a

[91] We note that each of these items is covered in the Department's training curriculum, so the proposed policy change would not introduce concepts that are entirely new to officers. However, including the concepts in policies messages to officers a heightened importance of compliance and provides the Department the ability to hold officers accountable should the policy be violated.

minimum a requirement that a solo pursuer only chase for tracking purposes and not close the distance to apprehend a suspect on his or her own.

- The SOP does not instruct officers to terminate a pursuit if the officer loses sight of the suspect – jumping fences or entering buildings, for example – or becomes unsure of his or her location.
- The SOP does not address the risks of engaging in a foot pursuit for officers not in uniform or without a full set of authorized equipment on their belts (Detectives, for example).

RECOMMENDATION 97: MPD should amend its SOP on Foot Pursuits to fully address the safety concerns associated with chasing a suspect without communicating with dispatch, solo foot pursuits, pursuing in unfamiliar areas or after losing sight of the suspect, and chasing a suspect while not in full patrol uniform and gear.

Fleeing Felons

The MPD SOP on the Use of Deadly Force authorizes deadly force:

> To effect the arrest or prevent the escape of a suspect who the officer has reasonable cause to believe has committed, or attempted to commit, a felony involving the use or threatened use of deadly force, when a high probability exists that the suspect, if not immediately apprehended, may cause death or great bodily harm.

Known colloquially as a "fleeing felon" rule, this policy permits the use of deadly force, even when there is no imminent danger of death or great bodily harm to the officer or others, to prevent the escape of someone where there is a "high probability" that person may later pose a threat. The policy is consistent with the principles laid out in a 1985 Supreme Court case, *Tennessee v. Garner*, which limited the use of deadly force on fleeing individuals to those situations where an officer can articulate probable cause to believe the suspect poses a danger to the officer or others.

Nonetheless, the better policy, largely adopted by progressive police agencies, would limit the use of deadly force to those situations that present imminent danger to the officer or others. As we discussed above with respect to the *Graham v. Connor* standard, nothing prevents the Department from adopting a more restrictive internal standard for use of force.

> RECOMMENDATION 98: MPD should amend its use of deadly force policy to eliminate authorization for shooting to prevent escape, or in any situation that does not present an imminent threat of death or great bodily harm to identifiable officers or third parties.

Shooting at Moving Vehicles

MPD's Use of Deadly Force SOP prohibits firing at a moving vehicle, "unless an officer has reasonable cause to believe that one's self or another is in imminent danger of death or great bodily harm," or (referencing the SOP provision quoted above) to effect the arrest or prevent the escape of a felony suspect where there is a "high probability" that the suspect "may cause death or great bodily harm" if not apprehended. The "fleeing felon" exception completely swallows the prohibition.

Shooting at a moving vehicle is widely considered by experts in police tactics to be both ineffective and inherently dangerous for officers and the public. A bullet is not designed to stop a 3,000-plus pound vehicle, but commonly ricochets off and could strike a bystander. And if the bullet penetrates a vehicle's window and somehow strikes the driver, the risks of the vehicle veering out of control are high.

It is for these reasons that the U.S. Department of Justice and International Association of Chiefs of Police recommend restrictive policies that prohibit shooting at moving vehicles unless there is a deadly threat presented by means other than the vehicle. Scores of law enforcement agencies around the country have adopted such restrictive policies. The basic principles of a sound policy are:

- A general prohibition on discharging a firearm at a moving vehicle unless the operator or occupant poses an immediate threat of death or serious bodily injury to an officer or the public by means other than the vehicle.

- Officers shall not position themselves in the path of a vehicle in an effort to stop the vehicle or detain the occupants.
- Officers have an affirmative duty to move out of the path of the moving vehicle to a safe position.

RECOMMENDATION 99: MPD should modify its prohibition on shooting at moving vehicles to make it clear that discharging a firearm at a moving vehicle is prohibited unless an individual in the car poses an immediate threat of death or serious bodily harm by means other than the vehicle, and that officers have a duty to move out of the path of a moving vehicle.

Regular Re-Evaluation of Force Policies

One major benefit of the Use of Force Coordinator position and the Department's relatively new effort to track and monitor force incidents is the capability of recognizing the need to create or amend policy. In the past, the Department's ability to do so was limited by the fact that it had no centralized way to review uses of force. A more robust review process of the sort we describe above will identify areas of needed improvement and will be positioned to see that those improvements are made.

RECOMMENDATION 100: The Use of Force Coordinator and executives assessing force should regularly reevaluate the SOPs governing uses of force in light of the facts and circumstances of the incidents they review, making amendments as necessary.

PART FOUR:
INTERNAL CULTURE & PROTOCOLS

SECTION ONE
MPD Culture

The question "Are we who we say we are?" is at the heart of our understanding of MPD's internal culture as an organization.

The second part ("…who we say we are") of that question captures the degree to which the Department acknowledges MPD's unique history and character. People throughout the agency recognize its history of progressive and innovative approaches to policing, its pride in a workforce that is notably diverse, and its pursuit and empowerment of talented and strong-willed officers. To the extent the "Madison Way" is intended to be different, many Department members seem well aware, and the organization itself promotes the message and its ideals on a regular basis.

Certainly, there is considerable truth to MPD's positive self-assessment. The legacy of influential Chief David Couper – who questioned traditional "paramilitary" dynamics and embraced innovation and creativity – continues to influence the Department's operations and philosophy. Interestingly, we met several current MPD officers who happened to have worked at one point for a different law enforcement organization; it was telling that these individuals were effusive in their relative appreciation of MPD as an agency.

We also have the sense, from many of the Department members with whom we spoke, that a number of MPD personnel are cognizant and appreciative of some of the specific dimensions of life in Madison. Some do celebrate the City's history as a mecca for civic engagement, political activism, and protest on the one hand, and a number of large-scale and high-spirited social events such as the annual "Mifflin Street Block Party" on the other.[92] And, while a number express frustration with the charged political environment and high degree of public scrutiny they face here, some recognize it as an asset to their work, and a part of the commitment toward service that they feel.

Our firsthand impressions correlated with the initial results of a survey that current MPD officers voluntarily took as part of our study.[93] Collectively, the officers expressed a high regard for the professionalism of their colleagues, and for the way Department members treat the residents of the City. And, by and large, they responded favorably to questions about their perceptions of Madisonians (though there was an interesting high number who believed that "Individuals call the police for too many non-crime matters that they should handle themselves. Some 40% said they "Agreed Somewhat," with another 14% claiming to "Agree Strongly.)

We come back, though, to the question that former and current MPD personnel raised with us – both gently and more pointedly – in different contexts and on different occasions during our study: "Are we who we say we are?" The implication, of course, is that the answer is often "No."

Obviously, some level of difference between espoused ideals and their consistent achievement is extremely common and not inherently bad. Mission statements and core values are aspirational by their very nature – a standard that would seem less meaningful if easy to universally achieve. We were neither surprised nor troubled, for example, by the number of officers who explained to us that their

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[92] The Department's "Special Events Team" has drawn national attention and praise for its philosophy of managing large crowd events and demonstrations. The team, comprised of some 70 specially-trained officers who serve as a collateral assignment, consciously takes an organized but restrained and collaborative approach to crowd management. Team leaders proudly cite the fact that, in spite of numerous events each year – some which develop relatively spontaneously – they have not had to resort to "hard gear" (helmets, shields, etc.) since 2005.

[93] Details about the survey, created for us by criminologist Dr. Eugene Paoline III, are included in the Report as part of our earlier discussion on de-escalation above.

schedule, commute, or even parking options were dispositive factors in their choice of work assignment within the Department: these considerations are both familiar and benign, if a bit out of step with more romantic notions of dedication and service. More interesting, though, was the fact that a third of responding officers in the survey expressed opinions about "community policing" that did not correspond to the whole-throated support of the concept messaged in MPD literature and instruction.[94]

The gap described above, and underlying the "Are we…" question, becomes problematic when the emphasis on, and pride in, particular ideals interferes with an honest evaluation and acknowledgment of the realities. The challenge is to ensure that success and admirable achievement do not lapse into complacency, or limit an agency's willingness to engage in rigorous self-scrutiny and occasional reform.

One direct inheritance from Chief Couper's era of leadership is the Chief's Advisory Committee, a group of 26 line-level officers from throughout the Department who volunteer to serve as liaisons between the Chief and their peers, and meet monthly both with him and each other. The concept extends back to MPD in the 1980's, and is based on the idea that there is value on both sides for line officers to have direct, unfiltered interaction and exchange with the head of the organization. We had the opportunity to attend one of these meetings during the year of our study. The Chief's rapport with the group was clear, as was the seriousness with which the members take their responsibilities.

To the Department's credit, officers of all ranks clearly do get to take an unusual amount of initiative, and the results can be impressive. For example, we spoke recently with an MPD officer who had a background in addressing domestic violence issues prior to joining the Department. She saw opportunity for enhancing the Department's exiting protocols for such cases, including issues of follow-up and danger assessment, and was gratified to be given the latitude and encouragement to work with a detective supervisor toward that end.

[94] This, of course, constitutes a disconnect with the notion of community policing as a cornerstone of the MPD approach. It is, however, consistent with some of the analysis we heard describing an undercurrent of tension between patrol officers and "special assignment" officers of various kinds, and which we describe in more detail in Part One: Section Five of this Report.

There are, however, occasional fault lines in the efforts to welcome, accept, and appreciate a diverse pool of co-workers. One instance of this was when the Department's own "Judgment Under the Radar" group offered training on unconscious bias and other racial issues in 2015 that engendered a surprisingly negative response.[95] In another example that we heard about from several sources, MPD personnel felt that the union's strong support of one officer in a fractious discipline investigation regarding computer-based messages had come at the expense of another officer of color who had been the subject of some of those messages.[96] One response to this event was the grassroots development of a "Diversity and Inclusion" committee that got together with the approval of management to explore possible divides within the Department's ranks, and a collective sense of alienation among representatives of different racial or ethnic groups. There were attempts to survey personnel regarding relevant topics, and a discussion of potential solutions.

We spoke with a few different participants in that process – including some who had questioned the need, and others who were struck by the gap between the overall survey results and their own personal or anecdotal perceptions. One member offered a persuasive analysis of that group's ultimate arc: the good intentions and earnest support of MPD leadership, followed by multiple meetings that did not seem to advance things in a focused way, and eventually led to a loss of energy and initiative. It that respect, the committee was reflective of the larger dynamics we observed ourselves: starting with a conscientious Department philosophy that did not always pay dividends in the daily experience of women or officers of color, followed by an initiative that was blessed by management (to its credit) but that lacked structure and momentum, followed by an anticlimactic conclusion.

MPD distinguishes itself with its willingness to at least *try* grappling internally with these challenging questions. Inherently, though, the perceptions and the experiences of individual officers can be so subjective as to make solutions elusive. Which means that, in our view, one key is for MPD's leadership – and Department members of all ranks and responsibilities – to refrain from resting on

[95]We discuss this in more detail in Part One, Section Three above.

[96] To their credit, current members of the union board acknowledged the issue during their meeting with us, and their efforts to address it constructively among their membership. But we also heard from another officer that any such efforts had no apparent traction and effect.

the laurels of impressive diversity numbers and inclusive "official" messaging. Instead, it should remain attuned to the possibility that officers from different backgrounds may indeed be feeling a sense of marginalization or frustration that relates to their gender, race, ethnicity, or other distinctive characteristic.

> RECOMMENDATION 101: MPD should engage in regular internal assessments (such as surveys) and other feedback opportunities, to ensure that issues relating to minority status within the Department are not adversely affecting individuals or groups, and to continue seeking potential remedies and reforms when such dynamics arise.

We also noted instances in which there seemed to be room for MPD to do more to maximize the advantages that go along with a diverse and experienced workforce. As accepting – and even solicitous – of recruits from diverse backgrounds as the Department has become, some of those same recruits found themselves expected to conform to more traditional paradigms once their Academy experience began. The same dynamic can weigh on officers once they graduate and become part of the force. For some of those officers, they were struck by how the supposed attributes that led to them being hired ended up being disregarded or discredited in the field.

More than one African-American officer with whom we spoke, for example, described the frustration of having a comfort level and insight into the dynamics of a call for service in a largely black neighborhood, only to find that the white officer who happened to be the lead respondent was not solicitous of ideas or help. Another officer described attempting to close the handling of a call by engaging with the community, only to receive push back from his partner who was interested in moving on to the next call. We also heard from an officer who was disturbed overhearing the "locker room talk" at the station about eating certain food in the "ghetto," and other inappropriate and insensitive remarks that were made in his presence. And we heard from an African-American officer who drew suspicion from fellow officers when efforts at relationship-building with the community while on patrol were perceived as getting "too close to suspects."

> RECOMMENDATION 102: MPD should assess its recruit training programs and patrol deployment strategies with an eye toward supporting and taking positive advantage of the unique perspectives and life experiences of its officers of color.

And of course, as we discuss in more detail elsewhere, another gauge of internal culture can be found in outside feedback. It is true that many residents are full-throated admirers of MPD and praise their work with sincerity and enthusiasm. However, a number of other community members we spoke to, particularly those most impacted by police activity, were much less positive about their experiences with police in Madison. Whether it was members of the homeless community, persons in reentry programs, or mothers of black children, many of these people dismissed the notion that MPD had used a "community policing" approach in dealing with their issues. Many of these individuals took pains to acknowledge the specific "nice cops" whom they had encountered. Too many others, though, were perceived as disdainful, demeaning, and harsh – and almost none would agree that principles of "problem-oriented policing" comprised the defining feature of how MPD patrolled their districts.

It is for this reason, as we discuss in more detail in Part One, Section Four , it is critical that MPD proactively solicit feedback from all of its communities to learn whether they think that the Department is "who they say they are." MPD would be well-served to solicit the candid evaluations we received in our outreach.

A further aid to this initiative could come in the form of more diverse engagement in the MPPOA's leadership roles. As discussed elsewhere, the Madison Professional Police Officers Association represents MPD officers for purposes of wages and working conditions, as well as helping its members navigate the discipline process and file grievances as needed. We were informed by individuals within the Department that Association's leadership historically has consisted of white males. While female officers have also recently served, including one on the current board. But there are currently no officers of color in leadership positions.

Board members are chosen through election, as voted on by the membership. Our understanding is that, in recent memory, no officers have color have sought such positions. This reality, of course, is open to different interpretations: it is hard to

fault anyone if the interest in volunteering has not been there, but that lack of participation could also stem from disengagement or a perceived lack of support. While current Association leadership – and members – certainly cannot force their colleagues to run, it can actively solicit and encourage diversity in numerous ways. Since the Association leadership represents all MPD officers, it should do all it can to diversify as well.[97]

> RECOMMENDATION 103: The Madison Professional Police Officers Association should make efforts to enlist greater participation by officers of color, including in leadership positions.

Protocols

What follows is a series of separate observations and recommendations about different aspects of internal Department operations. These elements, though not always visible to the public or significant matters of public concern, do relate to efficiencies within the organization. By extension, they have implications for the public services that MPD provides.

[97] To its credit, the Association has contributed to efforts to diversify its membership ranks. For example, it co-sponsors a small scholarship fund at Madison College in an effort to increase underrepresented individuals in the law enforcement workforce.

SECTION TWO

Seniority Shift Assignments

Pursuant to an agreement with the Madison Police Officers' Association, every year patrol officers, Community Policing Team officers, and detectives are able to choose their shift and patrol assignment based entirely on seniority. As a result, MPD has no managerial ability to influence patrol shifts based on officer performance and experience, patrol district or community needs, or any other rationale.

The potential drawbacks to this limitation are easy to envision: demanding and otherwise less desirable patrol shifts dominated by rookie officers, while "easier" shifts and assignments are filled with officers with significant maturity and experience. Ideally, of course, every shift and station should contain a mix of officers of varying levels of tenure and diversity. For MPD, the seniority shift rule makes any effort of management to achieve such a balance impossible.

Another phenomenon potentially created by the seniority rule is that some tenured officers are able to successfully obtain assignments working for first-level supervisors who may be less demanding or have lower performance expectations. Officers who have worked for sergeants who have appropriately identified performance issues are able to unilaterally switch to another shift with a new supervisor who will likely be unaware of those issues or not as interested in addressing them. We have also been informed that the seniority shift rule, with its annual rotations, becomes a potentially distracting preoccupation for weeks or even months prior to the actual change, with officers strategizing to find an assignment, shift, and supervisor that best works for them.

Perhaps most importantly, for an officer that has been the source of friction between members of the community that he or she patrols, the seniority rule prevents MPD from reassigning the officer to another station or shift without the officer's approval. In short, the seniority shift rule significantly erodes managerial ability to devise a work force that will have the greatest potential for success and surrenders officer deployment to the idiosyncratic preferences of the individual officer. While the MPD seniority shift rule is not unique to policing, many other law enforcement agencies are not similarly hamstrung by such a rigid rule. Because the rule has been contractually agreed to as part of the labor agreement between the City and the Association, it will require a change in the agreement to modify it.

RECOMMENDATION 104: The City should work to revise the current agreement with the Police Association in order to provide MPD more flexibility regarding shift and location assignment of officers.

SECTION THREE

Performance Evaluations

Virtually all public employees are evaluated at least annually by their supervisors. The employee performance evaluation provides a way to document exemplary, competent, or substandard performance. Those who receive good evaluations are usually more carefully considered when choosing special assignment or promotional opportunities. For employees who are not meeting expectations, the performance evaluation begins a process of documentation and remediation whereby supervisors are encouraged to devise an improvement plan designed to bring performance to acceptable standards. If the employee still is unable to meet those goals, the next step is to divorce him or her from the agency. This process speaks in fundamental ways to motivation, accountability, and effective management.

Over the years, MPD has used various kinds of performance evaluations with which to document officer performance. Most recently, a "goal setting" evaluation process was used. As part of the process, the supervisor would discuss future goals with the employee, with the idea that from year to year, performance would be evaluated on how well the employee achieved the goals set out for her or him in the year previous. We were informed that while some supervisors worked with their employees to develop laudable and tangible goals and did a fine job reporting how well their employees achieved their objectives, some supervisors did not document their individual processes well enough for the "goal setting" exercise to be meaningful and helpful.

As a result, a few years ago, MPD decided to abandon annual performance evaluations altogether and replace the concept with "supervision by walking around." Each supervisor is instructed on the importance of continuing to provide productive input on the performance of each employee by remaining closely engaged with them and providing regular praise, guidance, and criticism as appropriate. While this approach certainly has potential to be useful, the process does not require any regular and written assessment of the employee's performance.

As a result, there is no current requirement for a supervisor to record the performance of a competently functioning employee. While other devices and mechanisms exist to identify the exemplary employee or one failing to meet

standards, for most officers in the middle, there is no annual document setting out a record of their triumphs or challenges.

It is true that meaningful performance evaluations have traditionally presented a challenge in policing and the public sector generally. Supervisors have built-in disincentives to distinguish among employees. For a police supervisor who wishes to avoid conflict, grievances, and unpopularity among officers who work for him or her, it is most convenient to issue evaluations whereby "everyone gets an A." Police agencies also have struggled with developing criteria that are fair, objective, and based on who the officer is, as opposed to who the officer knows, or the nature of the relationship with the evaluator. Moreover, rewarding "objective" criteria in the evaluation process – such as number of citations or arrests – can have the unintended consequence of rewarding conduct that may be inconsistent with principles of progressive policing.

The challenges of devising effective evaluative processes, however, has not, in our experience, ever led to MPD's current model of essentially abandoning them. One problem with the elimination of the documented performance evaluation process is that it entirely does away with one device through which a police agency can impact officer performance. For example, if an evaluative process made it clear to officers that a key metric of their performance would be the degree to which they deployed problem-solving techniques in their daily activity, or implemented de-escalation strategies in dealing with combative subjects, the performance evaluation system could be used to incentivize officers to use these tools more frequently.[98] Moreover, a performance evaluation system setting out such goals requires supervisors to devise ways to identify such activity, which can lead to more effective and engaged supervision.

A police agency without a performance evaluation system gives up a potentially valuable device to impact officer performance individually and Department culture systemically.[99]

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[98] We speak elsewhere about the need of MPD to obtain data about problem-oriented policing by requiring officers to prepare more comprehensive daily activity logs.

[99] The 21st Century Policing Task Force recognized the value of performance evaluations: "Law enforcement agencies should evaluate officers on their efforts to engage members of the community and the partnerships they build. Making this part of the performance evaluation process places an increased value on developing partnerships."

RECOMMENDATION 105: MPD should reinstitute an officer performance evaluation system that collects and incentivizes progressive policing activity.

RECOMMENDATION 106: MPD should regularly audit performance evaluations to ensure that supervisors are uniformly documenting officer activity objectively and fairly.

SECTION FOUR
Obtaining Consent to Search

The Fourth Amendment protects the rights of all to be free from unreasonable searches. When officers have neither a warrant nor probable cause, they can only conduct a search if an individual voluntarily consents to it. However, not everyone is aware that short of a warrant, probable cause, or consent, police are generally not permitted to search a vehicle or a residence. Ignorant of this fact, many people stopped by police "consent" to a search because they do not realize they have an option to say no. The validity of a person's "consent" to a search oftentimes becomes a subject of criminal or civil litigation.

MPD has policies to cover consent searches of both vehicles and residences. With respect to vehicles, the policy instructs officers that no consent search may be made unless the officer has received from the person a voluntary and *unequivocal* consent to search the vehicle. MPD has similar language for residences but inexplicably omits the "unequivocal" language.

MPD policy further states that consent to search forms *may* be completed as evidence that the search was consensual. The forms provide the individual notice of the constitutional right that no lawful search may be made without consent and has a signature line indicating waiver of the right.

President Obama's Task Force on 21st Century Policing recommended:

> Law enforcement officers should be required to seek consent before a search and explain that a person has the right to refuse consent when there is no warrant or probable cause. Furthermore, officers should ideally obtain written acknowledgement that they have sought consent to a search in these circumstances.

Routine use of the consent to search forms created by MPD would align its policy with the Task Force recommendations and best practices, but use of the forms is currently optional. In order to ensure that Madison residents are fully informed of their right to refuse consent to search and to remove any dispute about whether the individual freely consented to a search, MPD should change its policy to require officers to use the forms absent exigent circumstances, and to document any such exigency.

RECOMMENDATION 107: MPD should change its current SOP to require presentation and signature of the consent to search forms prior to executing a voluntary search.

SECTION FIVE
MPD Sergeants and Representation

In talking to numerous police supervisors throughout the country, we have been repeatedly informed that perhaps the hardest adjustment of their career was when they were promoted to sergeant. With the promotion, the law enforcement officer has a new responsibility to lead and supervise persons who so recently had been his peers and friends. Along with those duties, a newly promoted sergeant has the difficult task of ensuring compliance with the standard operating procedures of the agency and holding former peers accountable when they stray from those standards. We have heard often how friendships can unravel as a result of the new responsibilities of the supervisor, as when he or she takes appropriate steps to hold accountable the "friend" who is now a subordinate.

Another source of potential ambiguity in Madison is its Police Officer Association. Such associations exist as the labor representatives of officers, of course. Their responsibilities are to negotiate for their membership for pay, benefits, and working conditions. Another fundamental responsibility is to represent their membership when allegations of misconduct arise, and associations are tasked to do their best to minimize (or even undo) accountability and discipline. Associations are also responsible for helping members lodge grievances against management decisions that are believed to be unfair to the individual officer or the bargaining unit as a whole. As a result of their responsibilities, police association representatives are often adverse to management since their members' interests are not always congruent with the interests of the administration.

Many police agencies also have separate associations who represent mid-level supervisors. Those associations are certainly interested in many of the same issues (pay, benefits, and working conditions), but because they are representing managers, the tension that exists between officers and management is usually significantly lessened. Moreover, as part of the management team, supervisors' interests are more likely to be more often aligned with those of the administration.

In Madison, however, the officers' association also represents all MPD sergeants. As a result, what are often competing interests of sergeants and officers are being represented for all labor purposes by one union. In addition to being philosophically inconsistent, the joint representation of officers and officers of

rank can create inherent problems for sergeants who are attempting to hold their subordinates accountable.

In cases in which we have experienced sergeants and officers placed in the same union, we have seen situations in which sergeants who have recommended that officers be investigated, recommended a performance improvement plan, or issued a poor evaluation, be shunned informally by association members. Perhaps more significantly, the association is often in the position of advancing a grievance against a sergeant who they are also tasked with representing, creating a potential or real conflict. In sum, having supervisors kept in the same association as the officers they are tasked with representing is not philosophically coherent, can create perceived or real conflicts, and can create impediments to supervisors who are intent on ensuring accountability and real supervision.

We have been informed that it would be difficult to unwind the current situation and move sergeants to the supervisor's union because of staunch resistance anticipated by the MMPOA.[100] While we recognize that accomplishing this recommendation will undoubtedly be a heavy lift,[101] we were not tasked to simply devise recommendations that were easy. Moreover, we are heartened by past experience whereby, based in part as a result of our recommendation and the strong will of the Chief and City Manager, a police agency we reviewed was able to successfully move first level supervisors out of the officers' union and into the supervisors' union where they belonged. We would be remiss not to identify this structural problem and potential impact on MPD sergeants' orientation in the organization and suggest that all work in Madison to rectify the situation.

> RECOMMENDATION 108: MPD should work with the City and the Professional Police Officers' Association to consider the feasibility of moving sergeants to the Association of Madison Police Supervisors.

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[100] We were reminded during the course of our study that the labor dynamics for public employees in Wisconsin have been significantly affected under the current governor's administration, with power and influence somewhat reduced for those associations that remain. That reality, of course, has likely had an impact in Madison. While acknowledging those factors as relevant, we believe the underlying principle of our assessment and recommendation still pertains.

[101] We have been informed that the change would be also potentially be unwelcome to sergeants because of intricacies in their compensation package.

SECTION SIX

Dispatch Services

As the link between a caller requesting service and a police officer in a neighborhood, dispatchers provide a critical role in ensuring an effective police response. Historically, the City of Madison operated its own independent dispatch system in which City employees handled the dispatch function for MPD resources. In 1987, Madison turned over dispatch operations to the Dane County Department of Public Safety Communications. MPD is by far the largest user of the 911 center, which provides dispatch services for 65 police and fire departments countywide.

The consolidation of dispatch services has been a source of some controversy for the past 30 years, and we frequently heard the view that the City should reestablish its own independent 911 center. Beyond the economic infeasibility of this proposal, the logistics of such a move make it unlikely. As fewer people have landline telephones in their homes and communications occur more frequently over cellphones, the trend toward regional communications centers and away from individual city-run operations is growing.

With any consolidation, however, lines of authority can fragment or otherwise seem ambiguous, and there is the potential for relationships between participants to become inefficient and strained. Understandably, for example, people who call 911 to get a police response generally think the individual who answers works for the police department; a response that is perceived to be unsatisfactory redounds to the detriment of MPD without the accompanying control. More urgently, in the case of incidents that result in controversy and potential liability, the potential can easily exist for finger pointing to take precedence over working cooperatively toward constructive change. Over the years, there have been several such controversies, each causing a renewed call for the City to go its own way.

Other factors complicate the dynamic as well, including the technology challenges resulting from the lack of intra-operability, seemingly created because the City and County have different purchasing processes and priorities. Moreover, as with jurisdictions around the country, the communications center faces challenges typical of a stressful profession, including limited training budgets and high turnover rates among staff.

For its part, MPD has been frustrated by the recent loss of its place on a formal board that the County had created to help oversee and advise the center's operations – one more way in which its influence over an important function has seemingly been diminished. There is attendant dissatisfaction with the lack of input and follow-up they are afforded after expressing a concern or complaint about the handling of a particular call. Though any discipline issue itself is clearly the purview of the County, MPD bemoans its lack of ability to help address any underlying performance problems and help promote fixes. Nor has it enjoyed success with proposals such as a specialized cadre of 20 dispatchers specifically assigned to MPD lines, who would master the geography of the City and learn how to most efficiently assign MPD cars to calls.

Encouragingly, though, MPD supervisors suggest that things have improved in recent months. MPD serves on committees that address different aspects of the center's operations, both technical and otherwise; these have lately proven to be a forum for improved communication and problem solving. The key to continued improvement, however, and an MPD priority in this arena, is to enhance "police-specific" training opportunities for the call-takers and dispatchers who staff the center.

MPD does currently conduct a training block at the academy for dispatchers, and all new dispatchers are required to do an eight-hour ride-along with an MPD officer. In addition, all dispatchers are sent to an abbreviated 16-hour Critical Incident Partner training facilitated by the UW-Madison Police Department, and some have attended the 40-hour Critical Incident Team training taught by MPD. Managers at the County 911 center acknowledge that it would be useful for their communicators to do more training with MPD personnel, but training budgets are thin. MPD could assist by establishing itself as a regular presence at the quarterly in-service training for dispatchers. MPD has occasionally presented a class at this training, and reports that it is always available to do so when asked, but in the past MPD has only been requested to send trainers around a particular issue or concern. A better practice would be for MPD to work with the 911 center to set a regular schedule for MPD to teach at the communicators' in-service training so

that dispatchers receive regular, ongoing training from MPD officers at least once a year on important, law enforcement related concerns.[102]

> RECOMMENDATION 109: MPD training staff should work with the Dane County Department of Public Safety Communications to establish a regular schedule for teaching at the quarterly communicators' in-service training at least once a year.

In addition, MPD should work with the 911 center to explore opportunities for interagency training between MPD patrol officers and dispatchers. Currently, all new MPD recruits spend two hours observing dispatch operations, but increasing the frequency of contact between officers and communicators through joint training would allow both groups to better connect, understand each other's challenges, and find ways to more effectively work together.

This type of cross-training could be particularly valuable for handling calls involving mental health related situations. There are a number of issues concerning how much and what kind of information should be conveyed to officers by dispatch that are best worked out at the local level.[103] For example, just saying "the person is diagnosed bipolar" does not help the officer unless it is accompanied by discrete behavioral indicators.[104] Cross-training, along with more effective communication between the Mental Health Team and the communications center's managers and trainers, could help clarify these issues and establish specific expectations.

Also, working through scenarios involving individuals in mental health crisis could hone tools for both dispatch and officers and help devise optimal responses to those calls. As an example, one challenge that regularly emerges in a call

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[102] The curriculum for this training does not necessarily have to be MPD-specific, but instead could relate to general law enforcement concerns that could apply to any of the 23 law enforcement agencies for which the 911 center provides dispatch services.

[103] Even more broadly, MPD and the 911 center should consider the possibility of following the lead of some jurisdictions that siphon off crisis calls in which a person is despondent but not a danger to others to a non-police crisis response line.

[104] The Dane County Community/Police Task force recommendations similarly recognized this need for dispatcher training: "Dispatcher training should be enhanced to include the collection of additional information to improve officers' preparedness, prior to the arrival on the scene of particular types of crisis."

involving a person in crisis is how to handle the handoff from a communicator who is on the phone with the person and officers who have arrived on scene. While the dispatcher may be incentivized to quickly turn the situation over to the on-scene officers so he or she can move onto the next call, that approach is generally not the most effective way in dealing with someone in mental health crisis especially if the dispatcher has been able to develop a relationship with the caller while awaiting police arrival. In those cases, it may be helpful for the dispatcher to maintain that contact and relationship until the officer has the opportunity to build some credibility with the caller. This type of scenario could be addressed in depth at joint scenario-based training facilitated by MPD.

> RECOMMENDATION 110: MPD should work with Dane County 911 center to develop scenario-based interagency training to better integrate the functions of patrol officers and dispatchers, particularly with regard to calls for service involving persons in mental health crises.

Finally, communications by both officers and dispatch often play an important role in determining effective or less optimal responses in critical incidents. Recognizing this, police agencies that conduct robust critical incident analyses routinely invite those responsible for communications to the post-incident review meeting. The participation of a dispatch or communications supervisor often provides helpful insight into the discussion and assists in developing effective remedial plans.

> RECOMMENDATION 111: When MPD convenes a critical incident review, communications issues involving dispatch should be among the topics reviewed, and in cases where the effectiveness of communications is in issue, managers from the Dane County 911 center should be invited to participate.

SECTION SEVEN

Hiring and Training MPD Officers

Part of the ongoing national dialogue surrounding each high profile, controversial shooting in recent years is a discussion of how to train officers to better serve the public's interest – and whether training them to be "warriors"or "guardians" better serves that goal. Intertwined with that discussion is the question of who is selected to serve as police officer, and whether any type or amount of training will make a difference if an agency is not hiring the right people.

One of the six pillars of President Obama's Task Force on 21st Century Policing is Training and Education. The report talks about the wide variety of challenges facing today's police officers in an increasingly pluralistic society and recognizes the need for a "higher level of education as well as extensive and ongoing training in specific disciplines." Embedded within this pillar is an understanding that the task of training officers to reflect an agency's values begins with recruiting and hiring individuals with attitude and interpersonal skills that will support those values.

To its credit, MPD demonstrated an understanding of this connection well before the Task Force published its report. Its recruitment and hiring process is unique among agencies with which we have worked, with an emphasis on attracting people with diverse life experiences, and who possess the character traits and social skills that translate into the problem-oriented approach to policing that Madison has long espoused. Its training Academy is similarly impressive and forward-thinking, expanding on the state minimum requirements in meaningful ways, implementing best practices with respect to scenario training, and employing a student-centered approach to learning that is intended to foster critical thinking and problem solving.

Recruitment & Hiring

MPD has a robust recruiting and hiring program. The Department has long sought candidates with diverse backgrounds and has tilted preferences toward persons with life experience and higher levels of education. To accomplish that, it has put together a complex and impressive network of recruiting efforts. The significant resources devoted to these efforts have paid off – MPD sworn officers

are 30% female[105] and 21% non-Caucasian. The average age of new officers is 27 or 28 years old, and nearly all have college degrees.[106]

MPD has a designated recruiting squad of 20 to 30 officers that the Department uses to identify and attract 20 to 30 new hires each year. This recruiting squad goes to career fairs at colleges in seven states, visiting criminal justice programs as well as sociology and psychology departments. They try to make personal connections with potential recruits, maintaining a section on the Department's website with bios and pictures of members of a designated "Hiring Resource Group" with the expectation that recruits will reach out to officers who have similar backgrounds and life experiences. Those tasked with recruiting are encouraged to think creatively about new ways to attract diverse female candidates, such as the initiative to send letters to coaches of women's NCAA sports teams, making a sales pitch to them about the unique attributes of MPD with the hope of attracting those coaches' players.

Beyond its recruiting efforts, the Department prides itself on its willingness and desire to hire candidates whose background would not traditionally suggest a career in law enforcement. Anecdotally, we spoke with officers who told us they never had considered being a cop until they heard the pitch from MPD. As with recruiting, the Department invests significant resources in a hiring process that is unique in many ways, with a willingness to take calculable risks on individuals who might not seem on paper to be excellent candidates. Of course, as with any law enforcement agency, MPD does have criteria that are automatic disqualifiers from employment – such as felony or domestic violence convictions – but otherwise has few of the bright-line rules that are typical among law enforcement agencies. In many agencies, having a history of juvenile contacts with police, or gang ties, or distant drug use all serve as disqualifiers. For MPD, these are issues worth exploring during the extensive hiring process, but do not necessarily preclude selection. Because MPD generally hires older candidates, the notion is

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[105] By way of comparison, federal law enforcement positions are 15% female; the national average of local law enforcement agencies is lower. MPD was recently featured in a national publication for its accomplishments in attracting women to its ranks. (https://www.politico.com/story/2017/11/14/women-federal-law-enforcement-male-dominated-244649)

[106] A college degree is not a prerequisite to hire, but candidates must have 60 hours of college credits (the equivalent of a two-year Associates' degree).

that many have matured and that their early troubles or youthful rebelliousness can become assets for police work because of their ability to see and understand different perspectives.

MPD should continuously assess its hiring requirements to ensure they do not exclude persons who might otherwise be excellent police officers. The City is currently engaging in such self-reflection for other employment hires, examining entry tests to see if the knowledge needed to pass such examinations is important to effectively serve in the job being sought. If the test requires knowledge not necessary for effective policing, the test may disqualify applicants who might otherwise be well-suited to the position and may cause an unnecessary disparate impact.

> RECOMMENDATION 112: MPD should continue to strive for a diverse recruitment and hiring program, and should regularly assess its criteria and any other hiring process to ensure there is no unnecessary exclusion of persons who otherwise might be excellent officers.

The thoroughness of the hiring process gives MPD confidence in its ability to select "non-traditional" candidates. After an initial screening of applications, MPD invites qualified applicants to participate in an "oral board," an interview with a three-member panel that includes one community representative, in which applicants are called on, through a series of questions, to express their views on diversity, cultural competence, and what a police officer should be. There are no set numbers for advancement, but the oral board generally cuts well over half of the candidates.[107]

Those candidates still deemed eligible after oral boards advance to background investigations. Those who survive backgrounds are placed on an eligibility list of somewhere around 40 or 50 candidates that goes to the Police and Fire Commission for approval. The PFC asks questions about the hiring process and scrutinizes the demographic breakdown of the list, but generally gives its authorization to hire any of those on the list. At this point, a candidate has three more steps to complete: an hour-long one-on-one meeting with the Chief; a four-

[107] Those who are cut get feedback on how they could improve their performance if they decide to apply again the following year.

hour ride along with a field training officer who peppers the recruit with questions; and a psychological evaluation.

The goal of the psychological examination is to evaluate candidates' innate personality traits to assess their suitability for careers in law enforcement. The contract psychologists MPD employs for this task have found that traditional personality measures are not especially adept at identifying issues in the police applicant context and thus examine traits such as impulse control, judgment, honesty, integrity, personal biases, capacity to perform under stress, and ability to deal with supervision. Moreover, the psychologists have been used by MPD to examine concerning trend lines. For example, when a spate of female applicants dropped out of the Academy, the psychologist was asked to analyze whether there was anything about the background of the recruits or the process that was deleteriously impacting their probability of success.

Another way in which the psychologists could be useful would be to identify ways to improve the background investigation process. The Department should regularly ask the psychologists whether there is additional information about the applicants that could or should be obtained that would be helpful to their assessment. In addition, the psychologist should be encouraged when reviewing individual background investigations to identify any important follow up that might provide further helpful insight into the applicant, and MPD should then reopen the investigation to follow the additional leads.

> RECOMMENDATION 113: MPD should regularly seek input from its contract psychologists about ways to improve the background investigation process, both with respect to particular individuals' applications and more broadly on a systemic basis.

Overall, we found MPD's recruitment and hiring process to be thoughtful and thorough. It purposely engages in identifying and hiring candidates who come from diverse backgrounds and possess unique life experiences that might make them well-suited to represent and enhance the Department. The Department should continue these efforts, and should regularly assess its criteria and practices to ensure that its high standards continue to be met.

Promotions

The decision about who to promote into positions of leadership and supervision is as important as hiring decisions. MPD should expand its tradition of inviting community representatives to participate as the Department interviews applicants to the promotional process. As civilians outside MPD's culture, community members could provide insight and a fresh perspective on candidates that the MPD interviewers likely already know. Moreover, during the interviews, community representatives will likely focus on issues such as the candidate's ability to productively engage with the community. MPD would be well-served to bring community members into this discussion as these important decisions are being made to select the leaders of its organization.

We recognize that the Police and Fire Commission represents a form of community input into the promotional process because it scrutinizes the list of individuals recommended for promotion by MPD and has the ultimate say as to whether the promotion moves forward.[108] While we appreciate the value of that process, it occurs at the back end when MPD's tentative decisions have already been made. Having a representative of the community involved in the selection process itself could result in a changed dynamic. MPD should increase its community involvement in this important decision-making by inviting representatives to participate in promotional interviews.[109]

> RECOMMENDATION 114: MPD should engage community members at the interview stage of its promotional process.

[108] This is not simply a "rubber stamp" process. We learned through our review that the PFC has, at times, rejected the Department's promotional recommendations.

[109] MPD reports that finding a diverse group of community members to serve on hiring panels is challenging, given the time commitment demanded. Elsewhere, we recommend a body of community members to work with the proposed independent auditor on oversight. The responsibility of participating in MPD promotional panels could well be added to the scope of duties of this Police Review body.

MPD Training Academy

The MPD Academy trains 20 to 30 students each year, for a total of 868 hours of training over six months. The State of Wisconsin currently mandates a 720-hour curriculum (up from 520 in 2015) for certification, and Madison weaves its additional training throughout that state-mandated curriculum. Some of the extra training is in the same subject area as the state curriculum, with Madison providing extra hours of instruction (for example, in issues surrounding mental health response). Some is in areas developed specifically by and for MPD to respond to concerns particular to Madison, such as the Judgment Under the Radar course and community engagement exercises.

The Training Team engages six full-time officers who are certified by the state to teach a variety of basic law enforcement skills,[110] but much of the training Academy is taught by officers and detectives who work in specialized areas (for example, Child Maltreatment is taught by a Detective from Special Victims).

The Academy staff's approach to teaching is reflective of the kinds of students who attend. Most, if not all, have college degrees, and most have had some significant job and life experience after college before joining MPD. The kind of boot-camp approach to Academy training that we are most accustomed to seeing in law enforcement is nowhere to be seen at the MPD Training Center. Instead, Academy staff talks about an adult learning model and a student-centered approach to teaching – educational philosophies that focus on active learning, encouraging students to reflect on what they are learning, giving them some control over learning processes, and facilitating collaboration among students.

Academy training features classroom training integrated with scenario training that gives students the opportunity to practice skills in realistic encounters, as we describe in greater detail in Part Three, Section Three. Classroom learning is important, of course, and there are many legal and practical concepts that must be

[110] Unlike other specialized assignments where officer tenure is limited to four or five years, Training Team personnel can remain in their positions as long as "mutually beneficial." We recommend elsewhere that this "mutually beneficial" flexibility be adopted with regard to Neighborhood Officers, Mental Health Officers, Educational Resource Officers, and other special assignments.

memorized and mastered before one is qualified to be a law enforcement officer. But the opportunity to apply those concepts under the stress of a real life situation and then debrief the scenario with a skilled trainer cements the lesson in a way no amount of studying or classroom instruction can.

Beyond the written curriculum and required skills application, there is much an MPD recruit needs to learn about the agency's relationship with the community and expectations for its officers' performance in the context of its history of problem-oriented policing. We have written at length in other sections of this report about community engagement and MPD's efforts at addressing issues of equity and racial disparities. To MPD's credit, its emphasis on diversity means that each class includes students with varying degrees of personal experience with the distinctive communities they are eventually assigned to police. For some new officers, though, the first experiences they have with persons of color, or homeless individuals, or someone living with mental illness, is in a traditional law enforcement role.

As we have discussed elsewhere, MPD has worked to educate its new officers on the constructs of explicit and unconscious bias and how such biases can result in disparate treatment of members of the community. Implicit or unconscious bias is a particularly thorny phenomenon because it is inherent in everyone and can impact police decision making on who to stop and how to respond to persons based on unconscious perceptions ingrained in the psyche. A first step in addressing these biases is through opportunities for relating to members of other communities in a constructive environment.

MPD's classroom training on implicit bias addresses the first challenge by identification and recognition of the phenomenon. Beyond the cultural competence training and Judgment Under the Radar programs introduced in the Academy, Training staff works to bring people from the community into the Academy to share their unique perspectives. However, a classroom setting is not ideal for these encounters and do not go far enough toward exposing students to diverse neighborhoods in a positive way.

One way to address this gap – and one utilized by some other agencies – is to devote some academy time to have students work constructively with members of diverse neighborhoods. In at least one other agency we are aware of, recruits are assigned to work with community-based programs for two weeks and assist in providing social service assistance to the neighborhoods. In addition to the value

of having future officers relate to the community outside of and prior to their law enforcement responsibilities, the experience also encourages students to recognize the value of such programs and to begin to think of ways to integrate broader problem solving strategies when they embark on their law enforcement careers.

> RECOMMENDATION 115: MPD should consider modifying its Academy in order to provide students with non-police social service work exposure in the City's diverse communities prior to graduation.

Academy Ranking System

At the end of MPD's Academy, each graduate is ranked on a set of objective criteria that generally is tied to performance on academic tests. The class ranking has potentially long-lasting impact on each officer's career because it determines seniority rank within the class. That is, officers from the same Academy class, who actually started their employment on the same day, are ranked in seniority dependent on their class rank. As discussed elsewhere, the choice of patrol and shift assignments at MPD throughout one's career is largely dependent on seniority.

There is concern that the Academy ranking system may give unfair advantage to those who come to the Department with a strong educational background and history of success in academic settings. Historically, students of color and from other diverse backgrounds, or those who have followed less traditional paths into law enforcement, have not always performed best on the objective tests. Though these students bring life experience the Department values, and indeed sought out in recruitment, they feel that diversity of experience is undervalued as they begin their careers because of the weight given to class rank.

MPD should examine its class ranking system to determine whether empirical evidence confirms the view that the Academy class ranking system disproportionately impacts students from diverse backgrounds. If the concerns about disparate impact are supported by the data, and to the extent the Department needs to rank students to create an order by which officers express preference for job assignments, the Department should consider using other ways to determine "seniority" of students from the same class. The Department could use an officer's application date or the date he or she accepted the preliminary offer of

employment. Or the Department could introduce a random "lottery" system, where class members draw numbers to determine "seniority" rank within the class.

> RECOMMENDATION 116: MPD should study whether the Academy class ranking system has a disparate impact on persons from diverse backgrounds.
>
> RECOMMENDATION 117: MPD should consider whether using Academy class rank for purposes of seniority places outsized importance on such criteria, or whether there are alternatives for determining the "seniority" of students from the same class.

Ongoing Training for MPD Personnel

The Academy is only the start of an officer's education; regular in-service training is imperative to replenish perishable skills and to export improved field responses on a regular basis. MPD officers receive 24 hours of in-service training each year, broken up into three separate eight-hour days.[111] One of these is district-specific, where all officers from a given district meet as a group to address topics of particular importance in their given parts of the city. Another generally addresses state-mandated training topics, such as refresher training on vehicle pursuits, first aid, or Taser use. The third in-service day is used by MPD to cover topics the Department chooses. Ideas for these training days come from various sources. The Training Captain is responsible for turning these suggestions into a proposal that then has to be approved by the Chief and Assistant Chiefs.

In-service training days have in the recent past covered new policy initiatives – the "back-up" policy and de-escalation – or ideas the Department wants to emphasize – cultural competence and trauma-informed care. They frequently include legal updates as well as scenario training targeting a particular learning objective. The flexibility of the in-service training day is an asset for the Department, allowing it to train officers on timely subjects or to introduce new or innovative concepts or respond to concerns that have arisen throughout the year. The training on trauma-informed care that was presented at this year's in-service

[111] In addition, officers have to complete a firearms qualification every quarter.

training is a good example of the Department's willingness to look "outside the box" of traditional law enforcement training and encourage its officers to look at things from a different perspective. We encourage the Department to continue to take an inventive approach to its in-service training curriculum.

In addition, just as the Department engages community members in the hiring process through its oral boards, the Training Team should, consistent with President Obama's Task Force on 21st Century Policing recommendation, look for ways to expand community engagement in the training process. The Task Force found that the community should learn about and evaluate the existing training within a department and provide input into shaping that same training content and delivery. While MPD does use members of Madison's community to assist in creating and delivering specialized training, there is no regular effort to solicit training topics from its community, either broadly – perhaps through the website or the Chief's blog – or in a more targeted way, by asking mental health professionals, juvenile justice experts, or other stakeholders in the criminal justice system for their ideas.

> RECOMMENDATION 118: MPD should regularly solicit the Madison community for topics to be presented at the pre-service Academy or during in-service training.

Training Bulletins

Another way to continually provide relevant, timely training updates to officers is to prepare periodic training bulletins that can be electronically distributed to officers. Topics can include particular field challenges that have been identified by training staff, or a lack of knowledge in the operation of assigned equipment noted by district leadership, or simple reminders of best practices in tactics and communication. Some police agencies regularly prepare training bulletins after a critical incident review identifies a training deficiency. Instead of waiting for the next scheduled in-service training, these issues can be addressed in a written bulletin, giving training staff a medium to effectively and more frequently communicate to officers throughout the year. MPD has occasionally issued training bulletins, and it does routinely publish Legal Updates on changes to the law or its interpretation. The same philosophy behind circulation of Legal Updates supports the routine preparation of training bulletins.

RECOMMENDATION 119: MPD should consider more frequent and regular use of training bulletins as a mechanism for training staff to more regularly communicate with officers on timely topics relating to tactics, equipment, or other issues of concern.

Specialized Training

MPD uses its training facility and the expertise of its personnel to run a number of specialized training classes throughout the year. These classes are open to and frequently populated by officers from other local agencies.[112] For example, as we discuss elsewhere, MPD offers CIT training that is mainly attended by officers from other agencies, and the Judgment Under the Radar training is being taught to numerous outside entities, including the Wisconsin State Bar and the Dane County Criminal Justice Council.

When an agency develops a reputation as a leader in education and training as MPD has, it may have the ironic consequence of causing that agency to have less curiosity about new training concepts developed by other agencies or hesitancy to send people to outside training. This report is replete with recommendations based on ideas learned from our experience with police agencies throughout the country. As we have noted, MPD has sent its training staff out to learn about other agency's training. For example, when tasked with developing in-service training on de-escalation tactics, an officer went to Seattle to observe their federal court-approved curriculum. The Department should support and further develop this practice of examining training conducted by sister agencies in Wisconsin and nation-wide in an effort to continually improve its own programs.

RECOMMENDATION 120: MPD should continue to examine training protocols throughout the country and use that review to continue to improve its well-functioning training.

[112] MPD is the only agency in the area to run its own academy. Other agencies rely on local colleges and other outside training opportunities to educate their personnel.

Training for MPD Supervisors

Unlike in some agencies, there is no formal sergeant supervisory school that a new sergeant must attend prior to assuming supervisory responsibilities. This is in large part due to the size of the Department and the fact that there is not a large class of new sergeants at a regular interval.

In the past, the Department offered a "Leadership Academy" that was a prerequisite for the eligibility of any officer who sought to enter the promotional process for sergeant. We heard positive descriptions of the training and its influence from several current members the MPD management team. Nonetheless, again perhaps as a function of the small numbers involved, that program was discontinued.

One effort in the direction of replacing that more formal exposure to principles of leadership and supervision was developed by MPD personnel within the last few years. The idea is to have new MPD sergeants goes through a specialized round of one-on-one trainings with Department subject matter experts on 20 discrete topics. Theoretically, this "cross-training" regimen is a valuable if unorthodox endeavor, and we spoke with newly promoted sergeants who had found it beneficial. Additionally, and more recently, MPD has hosted a state Department of Justice supervisory school at its own training facility, and sent some of its own newly promoted personnel through that.

To its credit, the Department continues to experiment. We talked with several MPD supervisors who in the last few years had been involved – and enthusiastic about – a police leadership training initiative that was affiliated with the International Association of Chiefs of Police (IACP). Much of that training focuses on sergeant-level issues of effective supervision, and there was an effort to import some of the curricula to the Department in different contexts. That specific initiative, however, was ultimately not supported by executive management after an experimental period.

Though we cannot speak to the value of that particular training opportunity, we do hope that the gap created by its ending is something the Department will continue attempting to fill. Leadership certainly can be learned through observation and practice over the course of a career, but this kind of learning can be enhanced and accelerated through education and instruction on different leadership

philosophies, techniques, and strategies. The Department should look for opportunities to expose its supervisors, particularly new sergeants, to outside training to broaden perspectives and develop their leadership capabilities.

> RECOMMENDATION 121: MPD should seek, encourage, and provide additional training opportunities outside the Department, particularly leadership training for first level supervisors.

PART FIVE:
ACCOUNTABILITY

SECTION ONE
Administrative Discipline: Issues of Employee Misconduct

A police agency's handling of administrative discipline has significant implications for both operational effectiveness and public trust. Peace officers are bound by agency-specific policies and standards as to their job performance, and are also subject to consequences from their employers as well as the justice system for any criminal activity in which they engage – either on- or off-duty. Both internally and externally, it is critically important for law enforcement's process for addressing such matters be legitimate, consistent, and rigorous. Accountability matters. It is valuable as a means of ensuring that compliance with the department's rules is a priority, that deficiencies are efficiently corrected, and that persistent or serious wrongdoing leads to removal. And it is necessary as a component of the public's confidence, given the authority and discretion that is bestowed on law enforcement personnel.

A prominent element in this dynamic, of course, is the notion of departments' "policing themselves" when it comes to internally investigating allegations of misconduct. This widespread practice is both a strength and a source of skepticism. While the most progressive and high-functioning agencies we have evaluated are ones that take ownership of internal discipline and expect all managers to contribute, it is also true that the insular, often secretive elements of

the process raise inherent questions about the objectivity of systems and the legitimacy of outcomes.

Along these lines, an interesting distinction to bear in mind is between internally- and externally-generated allegations of misconduct. As with most police agencies, MPD takes the initiative to open investigations against its own employees in response to performance issues that potentially violate policy. In obvious ways, Department management should be engaged enough to identify problems, and often will be in the best and only position to do so. Though interventions short of formal discipline are often appropriate and sufficient, a certain number of full investigations each year – with formal consequences as appropriate – speaks to the credibility of the process itself. These supervisor-driven cases form about half of the Department's formal disciplinary workload.

The other half – or greater in terms of sheer initial intake percentages – originate as external complaints from members of the public.[113] A law enforcement agency's handling of these matters is as or more significant than its own willingness to identify policy and performance issues among its employees. Inherently, they unfold against a backdrop of potential criticism: a complainant who is already at odds with an agency employee might have reason to wonder whether the department will follow through in terms of both investigation and accountability. The "closed world" of most personnel cases adds to the possibility of doubt and dissatisfaction, when complainants are left to rely on the agency's representations that things worked out as they were supposed to.

This dynamic is certainly not unique to MPD, but neither is the Department immune to it. We spoke to residents who were either unhappy with the outcome of their own complaint, or reluctant even to initiate one – not believing that they would receive legitimate due process. These perceptions can be frustrating to the public and agencies alike, especially when the latter – as with MPD – prides itself on being conscientious and responsive in such matters. They are also difficult to eliminate completely. But there are steps that can be taken to mitigate the impact of the aforementioned structural challenges.

[113] However, see discussion below, where according to MPD's past seven quarterly disciplinary reports, only two of the twenty-three cases that resulted in a sustained finding with formal discipline was a civilian initiated complaint.

An effective external complaint process involves several key components, all of which we evaluated for this study. They include accessibility and inclusivity when receiving complaints, appropriate triage, thorough investigation, valid outcomes, and a meaningful "back-end" notification process regarding results. MPD accomplishes some of these already, as we discuss below. We also hope some of our related recommendations – both for the discipline process and wider community outreach – will bear on public confidence and people's willingness to engage when they have concerns about officer performance.

Accessibility to Complaint Forms

External complaints and commendations are two types of important public feedback regarding the performance of MPD personnel. For commendations, MPD can use the input for promotional consideration, informal reinforcement of desirable conduct, or award recognition. Complaints, obviously, are the starting point for a review process that could potentially result in discipline, and may also offer service-related frustrations or insights that are useful for Department management to know. Both data inputs should be encouraged by MPD.

Complaints and commendations can be made on line by accessing MPD's website, telephonically, or in person at MPD stations. Complaint and commendation forms are also available at Madison public libraries. In addition, if a person wants to make a complaint, he or she can contact the Department directly by phone or email, and a supervisor will be dispatched to take the complaint. With one significant exception delineated below (the 90-day rule) the Department takes an "inclusive approach" – as opposed to agencies we have encountered that limit the methods of communication that they will accept and process. However, while MPD's station lobbies have other informational messages, they do not have complaint or commendation forms readily available – an option we have encountered elsewhere.

> RECOMMENDATION 122: MPD should provide accessible literature at its stations encouraging feedback regarding the performance of its officers, including blank complaint and commendation forms.

Time Limits on Investigating Complaints

MPD's current policy indicates that most complaints received 90 days after the incident will not be investigated:

> As a general rule, citizen complaints will not be investigated if the complaint is received more than 90 days after the alleged incident. If such a complaint is brought forth, it will be limited to a supervisory review of the available information, unless the complaint involves an alleged criminal violation, a significant rule violation (such as excessive use of force), or the complainant can show good cause for not making the complaint within the specified time limit.

Of the numerous law enforcement agencies that we have worked with, none have placed a time limit on investigation of complaints. Rather, the agencies are receptive to any complaints and investigate them, even if they are over 90 days old.

Certainly, a stale case presents more challenges to investigation since evidence may be more difficult to locate and memories may have faded. But complaints, in addition to providing a basis for accountability, also provide an opportunity for the agency to learn about concerns raised by its community and to do their best to collect facts to determine the validity of them. Placing an arbitrary 90-day limit on this important process does little to advance this opportunity.

> RECOMMENDATION 123: MPD should remove the 90-day limit from its SOP on investigation of complaints and investigate all complaints that allege a violation of rules.

Receiving Anonymous Complaints

Current MPD policy notes various ways that "citizen complaints"[114] can be received. One that is not expressly noted is the receipt of anonymous complaints. While anonymous complaints can be difficult to investigate, if sufficient leads

[114] While the term "citizen complaint" is a term of art in police science, literally read it excludes non-citizens as possible complainants and the term should be changed in MPD policy.

exist to move forward, the agency should make every effort to do so. Current PSIA leadership has informed us that such instances are not common in Madison but that it would be and has been receptive to investigating such complaints if received. We encourage this correct approach to be memorialized for future guidance.

> RECOMMENDATION 124: MPD should expressly codify its current practice by indicating in its SOP that it is committed to investigating anonymous complaints.

To reach our findings and recommendations about the quality of MPD's investigations (both internally- and externally-generated), we met with MPD's "Professional Standard and Internal Affairs" (PSIA) leadership on several occasions to learn about the particulars of the Department's approach and ask a series of follow-up questions. We also reviewed a variety of relevant policies and protocols. Additionally, we evaluated approximately 30 recently-closed investigation files. The goal of that exercise was less to "weigh in" after the fact about individual results, and more to use the concrete examples as a vehicle for generating broader conclusions.

On the whole, the investigative work product we reviewed within the 30 cases was very sound, with examples from either edge of the effectiveness spectrum occasionally interspersed throughout the files. We discuss this in more detail below, along with our perspective on potential systemic improvements. We should also note also that the process is efficient and impressively timely – sound qualities that are not always replicated by other agencies.

MPD's policy regarding how complaint investigations are to be handled provides guidance that is generally consistent with industry standards. A key moment in the process is when the allegations are originally received, evaluated, and then disseminated for further investigation/review. This is a major "fork in the road" for MPD's discipline process.

Categorizing Complaint Investigations

Current policy notes that allegations of unlawful conduct or significant rule violations will be given a "PSIA" number and investigated within that small unit (comprised of a sergeant and lieutenant). Similarly, some "lower level conduct violations" are handled by PSIA in the event that formal discipline is anticipated. However, complaints that are considered lower level conduct violations and are considered *unlikely* to result in formal discipline (either because of a lack of substantive merit, or the perceived sufficiency of lesser interventions such as Verbal or Documented Counseling) will be entered as a "Conduct Review." These cases are generally investigated with less thoroughness and are usually handled by supervisors at the unit of origin (though PSIA remains available as a resource and facilitator of the process).

"Decentralized" investigations are not inherently problematic – on the contrary, we have long advocated against the dynamic of law enforcement accountability being quarantined within "internal affairs" so that others can go about their business. For the responsibility to be shared widely among supervisors accomplishes several beneficial things, from the direct benefit of management knowing what is happening with their subordinates so as better to supervise them, to the indirect messaging that treats most discipline as necessary and constructive. Accordingly, we commend that aspect of MPD's approach.

At the same time, the designation process is concerning for a number of reasons. First, the outcome of internal investigations should be governed by the facts collected during that investigation. The Department's process suggests that the triage about whether a matter gets a PSIA number is dependent on an anticipated result before evidence can possibly be complete. More significantly, the assumed discipline level has the potential to influence outcomes prematurely, in both a procedural and substantive way. For example, investigations that might benefit from more formality and rigor (for the sake of the subject officer as well as the process) do not always receive it, while established misconduct that might actually warrant formal discipline is addressed through milder remediation.

In assessing the materials provided to us, we found that gaps in the evidence, or outcomes that surprised us with their leniency, tended to occur in cases that had

been characterized as "Conduct Reviews."[115] These included the following examples:

- An allegation by an arrestee that he was improperly kneed in the back led to an exoneration of involved officers. While there was surveillance video from the location that the Department could rely on, there was no apparent attempt to conduct a more detailed interview with the complainant.
- An officer failed to properly respond to a call for service, which ended up involving a juvenile who had accidentally suffered a minor wound from shooting himself. The officer acknowledged his actions and the case was sustained, but remained at the "Conduct Review" level with no formal discipline
- A complainant alleged that officers stopped and detained him "for no reason," while they asserted that he met the (limited description) of a domestic violence suspect. The complainant's lack of cooperation effectively ended the review, but the file did not include reference to readily available information that might have clarified what occurred.
- An officer received "Verbal Counseling" only in the aftermath of his short and inadequate initial report regarding a domestic violence incident.

In our view, and certainly with some exceptions, an investigation should follow a standard level of formality and thoroughness until such point that a more refined determination of its seriousness can be made. Indeed, the scope of a given case may well widen depending on how it proceeds,[116] and the degree to which the officer accepts responsibility may well impact the decision on whether discipline is appropriate.[117] Under this approach, it would still be possible to have some cases sent to the District for investigation depending on the significance of the alleged violation. However, the better system is to assign a PSIA number to all complaints in which a violation of MPD rules is alleged.

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[115] For 2016, cases designated as "Conduct Reviews" outpaced formal PSIA investigations by 103 to 37. We acknowledge that many of the relevant allegations were minor on their face, and less significant cases are certainly more common in most agencies. Still, our concern applies about the collateral consequences of the designation decision as executed by the Department.

[116] It should be noted that we did see instances in which cases were appropriately redirected to PSIA on the basis of early investigative findings.

[117] We noted several instances in which the officers, commendably, simplified the review process by acknowledging their actions and accepting responsibility. This is a refreshing dynamic.

RECOMMENDATION 125: MPD's SOPs should be revised so that every complaint alleging a policy violation should receive a PSIA number.

Recording Internal Affairs Interviews

Current MPD policy indicates that audio recording of interviews in internal affairs investigations of victims, witnesses, or complainants is discretionary depending on the severity and complexity of the allegation, the location and relevance of the interview, and the willingness of the interviewee to have the interview recorded. The discretion provided investigators not to record internal affairs interviews that could result in discipline is not consistent with best investigative practices and undervalues the importance of obtaining a recorded account of the incident from every witness. The only exceptions to the recording policy should be when it is impossible to record the interview or when a civilian witness declines to have the interview recorded. Of course, officer witnesses as employees of MPD do not and should not be afforded the option not to have their interviews recorded.

RECOMMENDATION 126: MPD should change its policy so that all interviews of victims, witnesses, or complainants to internal investigations that could result in discipline are recorded unless the situation proves impossible or if a civilian witness declines.

Disciplinary Sanctions

If the evidence from an investigation indicates a violation of MPD policy, a determination is made regarding the appropriate remediation. This ranges from "Verbal Counseling" up to suspension or even termination, depending on the severity of the misconduct. The Department recently strengthened its process by adopting and developing a disciplinary "matrix" that categorizes offenses and the range of standard sanctions. Such an instrument is intended to serve a couple of valuable functions: it promotes consistency and fairness, which are hallmarks of sound administrative discipline, and it sends a clear message to personnel about the Department's standards and accountability.

MPD provided us with data on officer disciplinary outcomes[118] from the beginning of 2015 until well into the current year. For cases in which a violation of policy was found to have occurred, we counted some 22 instances (including 4 resignations) in which the consequence was at least a one-day suspension. In the remaining cases, which totaled more than 200 for the nearly three-year period, the conduct was addressed either through counseling (which is not considered formal discipline) or a letter of reprimand (the lowest level of formal discipline).[119]

This disparity is subject to several interpretations, with one being that the Department casts a wider net than some of its law enforcement counterparts in addressing low-level issues that other agencies may find fall below their threshold for formal intervention. Most of the conduct that became the basis for discipline apparently involved violation of work standards or inappropriate conduct toward fellow employees.

Another explanation is cultural. Our understanding from multiple sources is that suspension days are taken extremely seriously and reserved for a higher level of misconduct, or for "repeat offenders" pursuant to a policy of progressively increasing sanctions. This approach is consistent with a philosophy that the Department espouses and that makes sense: short of cases in which separation from the agency is the only appropriate result, the underlying goal is not punishment but correction – a vehicle for constructively influencing future behavior by an employee who continues to be part of and to represent MPD.

Lastly, the Department also seems to place significant weight on acceptance of responsibility. In cases we reviewed, we were struck by the number of instances, far more than average in our experience, in which officers straightforwardly acknowledged the misconduct at issue (if sometimes with mitigating

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[118] It should be noted that, appropriately, MPD also addresses issues of potential misconduct among its civilian employees. That process, however, is governed by slightly different rules.

[119] On a separate but overlapping track, we looked at the seven quarters of reporting about discipline that are currently available on the MPD website – a commendable example of transparency that we discuss further below. We were struck, though that there were only two cases in which discipline was imposed as an apparent result of a civilian complaint. (One of these involved an officer who used his law enforcement status to gain a benefit at a place of business; the other concerned a disparaging comment, made on a public on-line petition and using City resources.) In our experience, we would expect to see a greater proportion of sustained cases with a formal disciplinary component emanating from a public complaint.

explanations). This dynamic is arguably one sign of a high functioning agency. It is also consistent with what we heard from officers at all rank levels, and notably from union representatives as well.

As for the role of the union, it seems to defy some of the patterns we are familiar with from other jurisdictions.[120] Instead of reflexive contention, the union asserts its intent to support members through the discipline process by promoting fairness, reasonability, and occasional disciplinary settlements. Dialogue with management on a number of issues – including the discipline – appears to be collaborative and mutually respectful. We did hear consistently that relations were strained for a time a few years ago, in the aftermath of one high-profile investigation that gave rise to several others, and was divisive in a number of ways. However, both sides characterize the current situation as greatly improved.

Another possible if less sanguine explanation for the low frequency of suspension days is that the Department is reluctant to impose such a sanction even when it is appropriate – an outcome that a subject officer and his union representatives would of course welcome. While the three parties at the settlement table may well be satisfied with the outcome, the complainant who was the victim of the policy violation, and had no voice at that table, may not.

As detailed further below, even when MPD suspends officers, most of the time most or all of the suspension days are "held in abeyance."[121] This means that unless the officer reoffends he or she may not serve most or any of the actual suspension days. These "held in abeyance" resolutions come about through an agreement with MPD and the officer with his or her Association representative involved in the settlement. As a result, even in the few cases in which officers are "suspended," the usual consequences that follow a suspension are mitigated or eliminated by the settlement agreement.

We also noted occasions in which the outcomes of specific "sustained" cases ended up being milder than we might have expected. The cases do raise concerns

[120] We asked to speak with union representatives on one of our early visits, and ended up meeting with a few of the current board members. They were generous with their time and responses.

[121] In its currently posted disciplinary quarterly reports, MPD indicated that in seven of the eleven suspension cases, all or some of the days were held in abeyance.

about whether the consequences are significant enough to offer appropriate accountability, and send a sufficiently firm message.

This is perhaps subjective when it comes to the lesser offenses; the difference between "documented counseling" and a formal letter of reprimand, or a letter and a day's suspension, is not so great as to warrant consternation. However, our concern is greater with cases involving more serious misconduct, such as force policy violations or potential integrity issues.[122]

We were, for example, struck by the following case summary: "An officer photocopied an exam of another officer and submitted it as their own work product."

Instead of characterizing this matter as an integrity issue involving cheating, it was considered as a violation of "Performance of Duties" and handled as a Letter of Reprimand, the lightest formal discipline that MPD has available. Because any truthfulness matter can also be considered a violation of performance of duties, the police agency's decision about how to characterize the violation can have significant consequences on the level of accountability imposed. Based on the facts set out in the summary, it appears that the transgression may have been more serious than substandard performance.[123]

In another case, a civilian employee was found to have lied to three separate supervisors about work claimed to be completed. While this case was considered a violation of Truthfulness, the employee was only suspended for five days, with two of them held in abeyance. Under MPD's disciplinary matrix, Truthfulness violations are categorized as "contrary to the core values of the MPD" with the presumption of at least a 15-day suspension.

Some police agencies have a "you lie, you die" philosophy in which they assert that any integrity issues will be addressed consistently and exclusively through

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[122] We also discuss the likely deleterious impact of the current post-disciplinary "appeal process," which entitles an officer to a hearing before the City's Police and Fire Commission when significant discipline is imposed, elsewhere in our section on oversight. Any disciplinary system in which multiple years go by without a single appeal presents significant reason for concern and further study.

[123] Moreover, for officers who are found to have violated integrity policies, it can have potential disabling implications regarding their ability to effectively testify in criminal cases.

termination. While we are not adherents to such a rigid approach, it appears that in the two cases, an offense that appears to have been a serious breach of integrity was characterized another way and repeated violations of truthfulness in the other case resulted in discipline well below the Department's disciplinary matrix.[124]

Finally, during our review, we learned about a current MPD officer with a 20-year history of discipline that included seven sustained cases for charges including false reporting, sexual harassment, misuse of communications system, and two incidents of inappropriate use of force. For these seven charges, he served a total of only nine suspension days, in part because many of the suspension days originally imposed were later held in abeyance.[125] While many of the offenses are older, and as discussed above, since that time MPD has attempted to provide more consistency to discipline, this current officer's history of misconduct coupled with minimal discipline suggests a legacy of leniency and a need for enhanced vigilance to the disciplinary process.

Our concerns registered here about MPD's disciplinary process would be significantly alleviated by one of our cornerstone recommendations, the appointment of an independent auditor. We would expect that the auditor, as a continual presence, would be reviewing these investigations in real time and providing an independent voice in assessing the quality of the investigation and providing an independent perspective on the potential violations of policy, outcome, and level of discipline. As an independent broker, the auditor sits at the disciplinary discussion table with a different perspective and understanding of the interests the general public has in ensuring appropriate accountability but who are not present. And with a continual presence reviewing complaints, the auditor would be able to provide further insight on the paucity of community complaints

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[124] A third case that also concerned us involved an officer who was repeatedly late to work and who did not follow MPD procedures when disposing of found property, which included a small amount of drugs and money. According to the summary, the officer received a one day suspension and letter of reprimand, which appears lenient based on the nature of the transgressions.

[125] Particularly concerning was the suspension that was transformed through agreement into zero actual suspension days: an inappropriate force incident where a fellow MPD officer complained and the facts established that as the complainant officer was on top of the subject, the offending officer struck the suspect several times in the head area, and while the subject was lying on the ground being handcuffed, the offending officer placed his knee to the back head/neck area and applied pressure.

actually received and the resulting rare occasion of sustained complaints resulting in formal discipline. As importantly, the auditor will have the ability to independently calibrate the level of transparency provided to Madison's public about MPD's discipline process.

> RECOMMENDATION 127: MPD should ensure that violations of integrity are appropriately charged as such in the disciplinary process.
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> RECOMMENDATION 128: MPD should consider whether there is sufficient accountability in its disciplinary process regarding violations of integrity and force.

"Restorative Justice" Disciplinary Program

Apart from the concern discussed above as to whether certain kinds of relatively significant misconduct are receiving a sufficient consequence, there are many instances involving lesser transgressions for which we favor alternative responses to the traditional menu of formal counseling, reprimand, or short suspension. Again, this in keeping with the corrective spirit that is a foundation of an effective disciplinary approach.

Recognizing this, MPD has occasionally adopted alternatives to traditional discipline. In the spirit of restorative justice,[126] officers who are found to have violated performance policies are requested to address the violation more holistically. For example, we were informed of one case in which MPD actually deployed restorative and educational justice principles to address the policy violation. In the case, the officer was involved in a preventable traffic accident in his patrol car. Instead of being reprimanded, the officer attended a "Below 100" class, wrote a memorandum setting out his take away from the class, and was sent

[126] We make several references in this Report to "restorative justice" initiatives with which MPD has been recently involved. Though this internal exercise is obviously distinct from the efforts being undertaken externally in the criminal justice system, and in collaboration with other City and County entities, the underlying spirit is the same: an emphasis on constructive repairing of harm as an alternative to punitive action.

to remedial driver's training.[127] This type of response designed by MPD is much more likely to remediate the officer than a letter of reprimand could ever do. MPD should be credited with devising this alternative and more effective method of remediating officer conduct.

It appears from the language of MPD's policy, however, that the use of restorative justice is limited to performance issues. Other police agencies have used these remedial principles in a broader array of situations. For example, officers who have found to have been discourteous or who have violated a Department's social media policy could be asked to write a letter of apology to the complainant. This type of remediation more directly addresses the transgression and has the added benefit of atonement to complainants in the true spirit of restorative justice. We invite the Department, which has shown a willingness to take innovative and creative approaches, to consider exploring its options in this area.

> RECOMMENDATION 129: MPD should expand its restorative justice disciplinary program to authorize and address courtesy violations or other low-level violations involving police/civilian contacts.

[127] In addition to the training component, some agencies devise remediation plans whereby the officer also provides briefing on the importance of the policy and his or her experience to his peers. That way, the remediation can extend beyond the individual officer.

SECTION TWO
Mediation and Other Tools for Public Connection

When a complaint is filed about officer conduct, MPD conducts an internal investigation and if the investigation establishes a violation of policy, the disciplinary process includes some form of remediation. At the completion of the investigation, the complainant is notified about the results of the investigation. Other than being responsible for the initiation of the investigation, being interviewed as a witness, and being notified at the end, the complainant is not otherwise involved in the process.

Other police agencies have handled some complaints through a mediation process that borrows a concept from civil litigation. Under mediation, the complainant and the involved officer are brought together in a dispassionate setting to express their respective points of view, as guided by a neutral third party. For mediation to be successful, the police agency incentivizes officers to participate by taking the matter out of the formal disciplinary process if the officer agrees to participate. The complainant must also agree to voluntary participation, which is more likely to be achieved if the mediator selected has a modicum of community trust. The mediation process provides a unique opportunity for the complainant and the officer to discuss their positions on the police/civilian encounter. When the mediation is successful, it proves to be consistent with principles of restorative justice, allows both participants a window into each other's perspectives, and provides an opportunity for productive dialogue. The mediation process has been found to work best involving allegations of discourtesy or similar allegations of misconduct during police/civilian encounters.

> RECOMMENDATION 130: MPD and the City should devise and promote a mediation program to resolve civilian complaints outside of the traditional disciplinary process.

Even without a formal, third party administered mediation process, there are sometimes other opportunities for parties in the complaint process to come together and exchange information and perspectives. We heard a few different MPD supervisors speak enthusiastically about conversations they had shared with complainants that – even in the context of allegations that were not sustained – seemed to shift people's impressions for the better. And we commend the Department's commitment to circling back with complainants at the end of the process to provide information and explanation regarding outcomes. This step is

surprisingly not required under Wisconsin law – and is not always met with appreciation and enthusiasm. But the gesture is worthwhile, and the Department reports anecdotally that it often does lead to a beneficial dialogue.

In one instance, the Department went so far as to invite a complainant who had been upset by a "high risk" traffic stop to watch in-car video for herself, and to discuss the officers' actions as well as her own reactions and their legitimacy. While the exercise helped clarify that the allegations against the officers were not actually consistent with the evidence, it was also useful for MPD representatives to be reminded of the public's potential for honest and understandable mistakes when it comes to navigating stressful interactions with the police. While recognizing that these "meeting of the minds" moments are not always possible or successful, we advocate an affirmation by PSIA to look for opportunities to conclude the complaint process on these constructive notes.

> RECOMMENDATION 131: PSIA should continue and build upon its current practice of post-investigation complainant outreach, including the evaluation of cases for possible informal discussion opportunities with involved parties.

SECTION THREE

Audits, Reports & Interventions

Internal Audit Function

Another of PSIA's functions is to coordinate and conduct a series of audits on various aspects of Department operations and officer performance. We saw documentation from recent audits in several different categories. Some of these related to inventory of items such as property/evidence, weapons, and seized drugs. Others concerned mandated inspections, such as of the SWAT team's explosive device materials. And a few directly related to officer performance, such as a monthly collection of speed data from squad cars in the field, with administrative review after any "triggers" caused by speeds in excess of 80 MPH without accompanying lights and sirens. Additionally, the Department conducts quarterly compliance checks regarding "MDC" use (the in-car computer system that, among other things, allows officer to communicate internally, similar to text messaging) and Department email.

These audits are not done by all agencies, and MPD deserves credit for taking proactive steps to promote and ensure that standards are upheld. The effort can be labor intensive, but, in our view, is very much worthwhile. A willingness to inspect goes hand in hand with expectations and then performance, and the recognition of potential accountability naturally has a simple but powerful influence on individual behavior. We compliment the Department's commitment to these endeavors, and the conscientious execution that we observed through PSIA's tracking materials.[128]

Transparency

The call for transparency is closely connected to the public pursuit of great accountability with regard to American law enforcement. Part of the frustration and suspicion that police internal investigations can generate is the mystery and secrecy that frequently surrounds them.

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[128] As discussed in our section on oversight, we advocate providing the independent auditor authority to conduct her or his own audits, as well as to review and report out the systemic results of MPD's internal audits.

Unlike many states in the country that have strict confidentiality laws regarding police officer disciplinary records, Wisconsin has a system that is relatively transparent. For example, the state's public records provisions – which turn on the balancing between the public's interest in disclosure versus the competing public interests that might be served by confidentiality – the public can obtain access, upon request, to summary documents describing an officer's founded disciplinary history.

To its credit, while not required by law, MPD issues quarterly discipline summaries to all of the area media outlets.[129] These summaries include all MPD employees who were disciplined each quarter, and a short summary of the policy violation. In recent history, MPD also published on its public website a significant amount of investigative information regarding two incidents that attracted much attention: the officer-involved shooting that resulted in the death of Tony Robinson in 2015, and the use of force that accompanied the arrest of Genele Laird in 2016.

In its response to President Obama's Task Force on 21st Century Policing, MPD also noted that regarding higher profile, more public type of cases, the PSIA office had the ability under policy to send out a separate media summary with a synopsis of the incident and the basis for the discipline. MPD's SOP further describes this process, which notes that the Department has the authority to release the disciplined employee's name. The policy indicates that whether to issue a summary with identification of the employee will be weighed on a case-by-case basis in determining the "public's right to know about the conduct."

During our review, we learned of no instances in which MPD has utilized this provision of its policy. In light of the recent increased interest by some members of the Madison community in access to officer disciplinary records, it would behoove MPD to consider proactively publishing information about high profile or otherwise serious cases that result in discipline, rather than simply including a terse summary in the quarterly reports. Such proactivity would likely instill

[129] When we asked whether the public also had direct access to these summaries, MPD arranged for them to be placed on the Department's website.

additional public confidence in MPD's interest in sharing such information to the degree the law and its policy allow.[130]

> RECOMMENDATION 132: MPD should regularly evaluate serious disciplinary cases to determine whether, pursuant to Department policy, they should be subject to proactive release.

Early Intervention System

In most law enforcement agencies, a small number of officers generate a disproportionately high number of complaints and other risk-associated activities and incidents. These individuals can alter the perception and reputation of the entire agency, but surprisingly often there are patterns of behavior that are only recognized and addressed by the department's management when it is "too late." The lack of earlier intervention can become an additional source of dismay to those affected by the behavior – including the officer himself or herself, who might well have benefitted from a monitoring or training initiative tailored to each person's unique circumstances.

In response to this phenomenon, police agencies throughout the country have established tracking systems with the goal of identifying behavior patterns of individual officers and intervening to correct potentially damaging conduct. Generally referred to as an Early Intervention System (EIS), the concept has been widely accepted as a tool to enhance accountability, strengthen supervision, and improve community trust.

An EIS program uses agency-collected data such as uses of force, complaints, internal affairs investigations, lawsuits, and attendance records to identify officers whose performance is significantly over the threshold in one or more of the designated performance measures. When an individual triggers the system, personnel analyze the incidents to determine what sort of intervention and remediation may be appropriate. The EIS program is not intended to be punitive but to provide the agency an early indication that an officer may be engaging in

[130] Not infrequently, MPD has "settled" serious disciplinary cases by having the officer agree to resign in lieu of termination. If the officer and circumstances of his or separation were made public, it would likely reduce the officer's interest in such a settlement. This point clearly merits consideration, but should also be balanced against the implications for public transparency.

problematic conduct so the agency can intervene through mentoring, closer supervision, or additional training to get that officer's career on the right path.

To be successful, an EIS program must be carefully planned and executed. Key elements include setting appropriate thresholds that are neither over- nor under-inclusive; training supervisors in the goals of the program and their responsibilities; having a plan for regularly monitoring and tracking progress of the program; gaining the credibility of all involved stakeholders; and having the ability to develop meaningful and practical plans for officer improvement as well as the determination to follow through on those plans.

Other agencies that have had an EIS for years report that another key to success is to create a mechanism for allowing human judgment to factor into the alert system. That is, the system cannot rely entirely on a computer to identify potentially problematic officers. Actively engaging sergeants in the process of identifying officers who may benefit from the program's mentoring and training programs but who may not have triggered any performance alerts will significantly advance the credibility of the system.

MPD has been discussing some form of an EIS for years, but for technical and philosophical reasons had not moved toward actual implementation until fairly recently. The Department has been actively engaged in the planning of its EIS program for the entire year of our review. The Department members charged with development of the Department's EIS have been conscientiously researching, planning, and considering the elements discussed above as they move forward toward full implementation. We understand that there are thorny technological issues involving the software program, and sensitive issues regarding threshold and performance measures that require the input and ultimate "buy-in" of numerous stakeholders. While we respect the thoughtfulness with which MPD is approaching these matters, we strongly encourage it to move with a sense of urgency to complete its planning and fully implement its EIS program.

> RECOMMENDATION 133: Rather than rely entirely on the computer to identify early intervention candidates, MPD's Early Intervention System should regularly request first-level supervisors to identify officers who might benefit from the remedial aspects of the program.

RECOMMENDATION 134: MPD should press forward toward full implementation of its Early Intervention System.

SECTION FOUR

Body-Worn Cameras

Over the past few years, police agencies have increasingly equipped their officers with body-worn cameras (BWCs). Different factors have contributed to this proliferation, including technological advances, the ease with which civilians' cell phones allow for audio and video recording capability, the availability of federal grant money for body camera purchase, marketing and discounts of the product by body camera manufacturers, and a heightened desire on the part of both law enforcement and its critics for objective evidence of disputed encounters. A 2015 survey by the Major Cities Chiefs Association and the Major County Sheriffs' Association found that 95% of surveyed agencies had either implemented or were committed to implementing a BWC program.[131]

The City of Madison gradually joined other jurisdictions around the country and initiated the conversation about whether the cameras made sense for MPD. A subcommittee appointed by the Mayor's Office concluded in 2015 that the cameras were not advisable, in part because of the perception that adoption of the cameras would be considered a panacea and bring the broader discussion of police-community relations and reform to a premature end. Meanwhile, proponents of the technology continued to express interest and to track national developments. As of this writing, the City still has yet to commit to cameras; Common Council recently voted down proposed funding for a pilot project as part of the 2018 budget process.

We discuss our perspective in detail below, having worked with agencies that represent the full range of potential responses to the issue. Moreover, our position continues to evolve as additional research results are reported. We recognize the concrete advantages that body-worn cameras can offer. At the same time, we also acknowledge the inherent limitations of the technology and the pitfalls of unrealistic expectations and unintended consequences.

In 2013, a federal court found that the New York Police Department had a broad pattern of unconstitutional searches and seizures, and ordered the agency to initiate a BWC trial program in response. The court's order spoke of a variety of

[131] Major Cities Chiefs and Major County Sheriffs, Technology Needs – Body Worn Cameras (2015), https://assets.bwbx.io/documents/users/iqjWHBFdfxIU/rvnT.EAJQwK4/v0

potential benefits.[132] Expanding on the court's analysis, Seth Stoughton, a law professor and former officer who specializes in the regulation of policing and contributed to the Body-Worn Camera Toolkit funded by the Bureau of Justice Assistance, has identified three categories of potential benefits:

- Symbolic Benefits. The adoption and implementation of body-worn cameras can potentially serve as a visible reminder that a police agency is aware of and responsive to public demands for transparency and accountability.
- Behavioral Benefits. The presence of a body-worn camera can potentially moderate the behavior of civilians and officers alike, increasing civility and professionalism, reducing resistance, and encouraging officers to use non-violent means whenever possible.
- Informational Benefits. Cameras can potentially provide unparalleled evidence, an inside perspective on police-civilian interactions that police reports and witness testimony simply cannot provide. This information may be put to use in a variety of contexts, including officer supervision and accountability; criminal investigations, prosecutions and defenses; civil litigation; officer training; surveillance; analytics and machine-learning; and so on.

The potential benefits are distinct, but not necessarily independent; they can be mutually reinforcing. For example, an agency that leverages the additional information by using BWC footage to improve police training can impact officer behavior in a way that enhances police-community relations. In the same vein, cameras can help alleviate the mistrust and frustration that arise when events are misperceived, misremembered, or misrepresented.[133]

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[132] OIR Group was retained by the Center for Constitutional Rights to assist in reviewing the remedial plan ordered by the Court. Four years after the order, a pilot body camera program in New York was finally launched earlier this year – with both advocacy groups and the Union expressing concern about the policy guiding the pilot project.

[133] It should be noted that MPD has had in-car video recording systems for several years, and that we have seen specific examples of how that evidence can be a useful tool in resolving contention and addressing public concern. For example, we reviewed a citizen complaint from an African-American woman who had been pulled over on a "felony traffic stop" by two Madison officers; her children were in the car with her, and her teenage son had been removed from the car and searched. She was upset about the experience and expressed the fear and sense of threat she felt regarding the officers' brandishing of their firearms.

Whether body-worn cameras can actually provide the potential benefits, however, depends on local conditions and how the technology is implemented. Consider the competing evidence that exists with regard to the potential behavioral benefits of body-worn cameras. In 2013, the Rialto Police Department, a small California agency, hosted the first randomized, controlled study: approximately 50 patrol officers were equipped with cameras and compared with their colleagues who were not similarly equipped. That study found that BWCs were correlated with a dramatic decrease in both uses of force and civilian complaints. In 2014, a trial at the Phoenix Police Department found no statistically significant reduction in the use of force, but did find a substantial reduction in civilian complaints. More recently, a randomized, controlled trial at the Washington, D.C., Metropolitan Police Department released in October of 2017 found no statistically significant reduction in the use of force or civilian complaints, while a similar study at the Las Vegas Police Department published the following month found substantial reductions in both the use of force and civilian complaints.

These findings offer a reminder that decisions about adopting and utilizing the technology should reflect the complexity of the issue. Community input, informed expectations, and shared understandings about policy and protocol matter as much or more than the baseline decision to invest in cameras and storage capability. Further, it should be well understood that BWCs will not always advance the goal that justified their adoption; indeed, on some occasions the technology may prove counterproductive. Video recordings can fail to capture relevant information or worse, present a misleading representation of events, even when the need for accurate information is highest: namely, during dynamic critical incidents involving deadly force.

The woman was correct in many of the particulars: the officers had in fact pulled her over because a very similar vehicle with a black female driver had just been connected to a crime in progress. However, a review of the in-car video recording (with audio) showed that her perceptions about the officers' level of aggression, and the prominence of their use of guns, had been exaggerated. The Department invited her and her son to headquarters to watch the video for themselves and to track the officers' quick transition (including appropriate apologies) once they realized the family was not involved – all while acknowledging the mistake that had occurred and recognizing the legitimacy of her subjective experience of the event.

This kind of careful, thoughtful communication – which obviously depends in part on the engagement and receptivity of both parties – is an example of the constructive potential that recordings offer.

The limitations can be as simple as a failure of the officer to activate the camera, a blocked camera lens (as when an officer is taking cover beside a car, for example), or the inability of viewers to properly interpret camera movement or to recognize how the camera's perspective can differ from the officer's own visual angle and perceptions. Accordingly, what was intended to be definitive evidence becomes just another source of dispute. Worse, the failure or inability to implement body-worn cameras as expected can compound the very feelings of mistrust that the technology was supposed to alleviate. In the aftermath of an officer-involved shooting in Charlotte-Mecklenburg, NC, for example, the police agency's refusal to release BWC footage of the event gave rise to significant public condemnation. It is entirely possible that from a public trust perspective, the agency would have been better off not having body-worn cameras than it was having them but not releasing the footage.

As that incident makes clear, the ability of body-worn cameras to advance the intended benefits will depend heavily on how the cameras are used. Skeptics from outside law enforcement have challenged as problematic the control that officers, and the authorities in general, maintain over the cameras. This includes everything from the decision to turn the cameras on or off (which critics argue can be a form of manipulation) to policies on public access that critics in many jurisdictions contend should be more comprehensive and fast moving. Even information that seemingly favors officers is challenged when it is released selectively.

While legitimate reasons exist for these restrictions, including investigative protocols and privacy concerns, the effect is nonetheless frustrating to those who expected more of a "transparency revolution." Yet another major source of debate is whether officers should be allowed to view recordings prior to giving statements when their own conduct is at issue. The concern is that exposure to the footage can – consciously or not – undermine the purity of their recollections and therefore the legitimacy of the resultant testimony. We discuss this issue in greater detail in Part Two, Section Two.

There are other concerns that merit consideration, some of which were expressed by the Madison subcommittee. One is the potential chilling effect of cameras on the kinds of informal, constructive interactions that enhance the neighborhood standing of individual officers in a variety of ways. And communities that already feel "over-policed" worry that the technology will only worsen that

dynamic – for example, through the use of cameras for surveillance initiatives that will infringe on privacy rights and target vulnerable populations such as the undocumented. Finally, as some subcommittee members saw it, adoption of the cameras has the potential to serve as a surface-level reform that preempts the deeper conversations and debates about systemic change they consider necessary.

On a more basic level, Madison must contend with the financial obligations that attach to BWC programs. Beyond the expense of the cameras themselves, such programs require a commitment for storage and processing costs that can be surprisingly large. There is also typically a notable increase in collateral costs needed for police, prosecutors, public defenders, internal affairs investigators, and judges to review recordings. These realities move the debate over the cameras into a more practical realm, particularly against a backdrop of resource priorities in the City and an ongoing debate about MPD staffing levels.

In weighing our recommendations, we are also mindful of a bill that is pending in the Wisconsin legislature and could tilt the balance against body-worn camera deployment in our view. This is because the bill, as currently written, could well present considerable hurdles to public release of body camera footage, thereby significantly eroding the transparency principles that serve as a major attribute of the technology.

With this in mind, and drawing on the lessons of early adopters within law enforcement, it is imperative that clear policy is developed before body-worn cameras are actually deployed in Madison. In our experience, there are "best practices" relating to the use of the technology that, if implemented, can ameliorate some of the more pressing reservations expressed by opponents. At a minimum, those practices should include the following:

Officer Use*:*

- Clear direction on when camera activation or de-activation is required, permitted, and prohibited.
- Clear guidance for officers on whether, when, and how to inform civilians that a camera has been or will be activated.
- A directive that officers must indicate on all reports—via a narrative or simple checkbox—whether the incident or investigative being documented was recorded and, if so, the source of that recording (e.g.,

police BWC, other police camera, civilian cellphone recording, private security camera, etc.).

- A prohibition on officers from reviewing video recordings when an officer's conduct is or may be under review, such as in the context of a use of force or complaint, until after the officer completes a preliminary report or is interviewed.
- Clear prohibition on officers sharing body-worn camera videos for non-work-related purposes or with individuals outside of the MPD.

Supervisory Use*:*

- Clear directives that require supervisors to regularly audit a sample of officer recording activity to ensure satisfactory compliance with mandatory and prohibited activation policies.
- Requiring initial or periodic training for supervisors on the use and interpretation of video footage, especially in the use-of-force context.

Agency Use*:*

- Sufficient discretion for MPD to use body-worn camera footage for internal investigations, audits, and training purposes.
- Clear guidance on when body-worn camera footage will and will not be released, including discretionary releases related to public requests, including a commitment to release video of high-profile incidents within a specified time period whenever possible.
- Accountability for officers and supervisors who do not follow the body-worn camera policy.

Because the development of a body-worn camera policy is critical to both the effectiveness and public acceptance of a new program, City leaders and the community at large should be equal partners with MPD in devising the policy.

> RECOMMENDATION 135: Before a body-worn camera pilot project is implemented, MPD should seek the input of stakeholders—including City leaders, prosecutors and defense attorneys, civil rights litigators, privacy advocates, the community at large, and rank-and-file officers—to identify and prioritize, to the extent possible, the intended

benefits and potential drawbacks of any body-worn camera adoption.

RECOMMENDATION 136: Before a body-worn camera pilot project is implemented, MPD should work with stakeholders to develop policies for that implementation consistent with the principles set out in this Report, and with intended benefits identified and prioritized in a manner consistent with the prior Recommendation.

RECOMMENDATION 137: If the pending Wisconsin legislation regarding body-worn cameras is enacted in its current form, Madison should delay implementation of any pilot program until the implications of the legislation on release of body camera footage can be assessed.

RECOMMENDATION 138: Assuming a reasonable consensus can be reached on policy, Madison stakeholders should remain open to funding a body-worn camera pilot project.

RECOMMENDATION 139: If MPD adopts body-worn cameras, it should commit to periodic evaluations (e.g., a one-year, three-year, and five-year review) to assess the qualitative and quantitative impact of the technology on the agency and stakeholders. Such periodic reviews should seek to identify whether the agency should continue its program and, if so, whether policy revisions are necessary to achieve or maximize the identified benefits.

PART SIX:
CIVILIAN OVERSIGHT: PUBLIC ENGAGEMENT, PUBLIC CONFIDENCE

As part of the key pillars of reform, President Obama's Task Force on 21st Century Policing recommended that law enforcement agencies "establish civilian oversight mechanisms with their communities." The call for formal oversight reflects a growing sentiment in the United States, where the outcomes of individual high-profile incidents in recent years have heightened a sense of division between police and segments of the public. Increasing public involvement – and heightening the extent to which police officers are accountable to entities outside their own agency – is an important way of bridging gaps of distrust, alienation, and misunderstanding.

Consistent with the Task Force recommendation, the potential for meaningful civilian oversight is not only to increase public confidence through greater scrutiny, accountability, and transparency but also to enhance law enforcement effectiveness through greater understanding and responsiveness. The most effective approaches are not inherently the ones that clash with law enforcement – though at times an oppositional relationship is needed in the face of malfeasance or recalcitrance. Instead, the most effective oversight manages to penetrate the insularity and limited perspective that even the best-intentioned police force can experience. Accordingly, we encourage a more comprehensive and multi-faceted approach for MPD and the City as a whole.

In Madison, the City's Police and Fire Commission ("PFC") has long served as formal external oversight for MPD as well as the Madison Fire Department. Dating back to a reform movement in the nineteenth century, and

intended to protect public safety leadership from inappropriate political influence or pressure, it precedes most other types of external monitoring in America by many decades.

This is both a point of pride and a limitation: while the PFC's mandate in Madison has remained largely unchanged for a hundred years, different approaches to oversight have emerged more recently, and are more attuned to the spirit of the Task Force recommendation, which reflects the increased national interest in public dialogue and greater accountability when it comes to police practices. The new models offer features worth considering.

Perhaps the most significant responsibility of the PFC is that of selecting a Chief of Police when a vacancy occurs. Unlike most other municipalities, the PFC has unfettered discretion in devising the application process and making a selection from the candidates.

In past cycles, the process has operated behind closed doors, with interviews between PFC members and the candidates but no opportunity for community input or engagement.[134]

Because of the degree of interest the community has in its police department, the interview process constitutes a significant opportunity for meaningful public input and engagement. A number of jurisdictions have recently included a public component to the Chief selection process in which community panels are provided the opportunity to ask questions and engage with the final set of candidates. Ideally, when the PFC devises future selection cycles, it will find a range of ways to solicit input from the broader Madison community to help ensure that stakeholders throughout the city view the Chief as a person they can trust and support – even in difficult moments.

> RECOMMENDATION 140: While retaining the ultimate determination on selecting the Chief, the PFC should consider ways to involve the Madison community in the selection process through community panels and interviews.

[134] We learned that Professor Herman Goldstein devised a number of the questions used by PFC to interview candidates.

Once selected, the PFC statute requires a finding of "just cause" for the PFC to remove a Chief of Police, essentially resulting in a situation where a Chief enjoys the possibility of life tenure provided he or she does not commit a significant transgression. This paradigm is again relatively unique to Wisconsin; in most jurisdictions, the Chief serves at the pleasure of a Chief Administrator or City elected officials, and some have a fixed term of years.[135]

While there are benefits to insulating top law enforcement executives from unpredictable political pressure, this dynamic comes at a cost: namely, the perceived limited ability to replace a chief who has, for whatever reason, ceased to be effective or responsive to the community's needs. Moreover, there are no current assessment tools built into the process with which to consider how well the Chief is performing. Madison presents the unique situation where the tenure of its Chief is immune from a City Administrator, elected officials, the electorate itself, or any evaluation process.

One reform that could balance the competing interests of insulating the Chief from political whims and the interest in having a Chief who continues to respond to the interests of the community would be to provide the PFC the additional responsibility to evaluate the Chief at regular intervals. After a fixed period the PFC would solicit input from its community and then prepare a performance evaluation considering what the Chief indicated she or he intended to accomplish during the application interview, assessing the degree to which those objectives were achieved, identifying additional accomplishments and highlighting any performance concerns. The evaluation would provide three options; if the Chief's performance met or exceeded expectations, she or he would be encouraged to continue; if the PFC believed that performance needed to improve; the Chief could be placed on a performance improvement plan, or if the performance was so below expectations that the Chief had lost confidence in the community, it would constitute "cause" under the statute and form a basis for removal.

Concern has been expressed about whether the PFC is the appropriate body to conduct an evaluation since even though it selects the Chief of Police, it has traditionally not been considered to be the Chief's employer. As an alternative, the evaluation could be conducted by the Mayor since that Office provides the City's executive function by nature and has the responsibility of supervising

[135] Milwaukee's statutory framework was changed to provide a term of four years for its Police Chief, subject to renewal.

department heads. The evaluation could also be presented to Common Council for discussion and sign-off. If the evaluation found substandard performance or a sustained inability of the Chief to improve on achieving certain metrics, it could be forwarded to the PFC for discipline or removal based on whether the results of the evaluation consisted a finding of "cause".

Alternatively, Madison could consider seeking an amendment in the statute to have the Chief serve a fixed term of years.[136] Under either rubric, such modifications would still buffer police leadership for a fixed period of time, but unlike the current situation, provide for milestones at which point the Chief, consistent with virtually all public executives in the country, could be subject to meaningful review.

> RECOMMENDATION 141: The City should institute protocols calling for a performance evaluation process for the Chief of Police at fixed intervals, with the evaluation being a potential basis for a finding of "cause" should the Chief's performance fall significantly below community expectations.
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> RECOMMENDATION 142: The City should consider whether to consult with its state legislative representative to propose amending the PFC statute so that the Chief of Police serves a fixed term, subject to renewal by the PFC.

Another important role of the PFC is to approve any new hires and promotions of MPD. Prior to any employment offer being made to incoming officers, MPD must provide the list to the PFC, which has the ability to accept, modify, or reject the Department's recommendations. We have been informed that the hiring lists are indeed scrutinized thoughtfully by the PFC, and that commissioners emphasize issues of gender and diversity in their questions. The Commission applies the same rigor to proposed promotions. As mentioned above, on at least one recent occasion that we are aware of, the PFC rejected a proposed promotion. This authority shows the PFC's role as a meaningful check in this

[136] Milwaukee's term renewal framework requires a reappointment by the Mayor, subject to confirmation by Common Council. We would recommend that in Madison the decision whether to renew a Chief's term remain with the PFC.

arena, and this example confirms the PFC's willingness to exercise that authority.[137]

Less impressive is the "real world" significance of the PFC's role in addressing public complaints of misconduct against MPD employees. While the statute allows the Commission to *receive* complaints, it can only take action and rule on the allegations after conducting a full-fledged hearing. In current practice, this requirement is problematic: it imposes a significant burden of time and attention on the aggrieved parties, and requires complainants either to have an attorney (at their own expense) or to take their chances navigating the administrative hearing process on their own. It is, therefore, no surprise that the PFC has heard very few community-based complaints in its history. With the possible exception of a recent complaint lodged against the Chief, we are aware of no sustained complaints against an MPD employee emanating from the process in at least the past decade.

The PFC's current hearing process also appears to have a potential chilling impact on the internal dynamics of the MPD discipline process. If the Chief notifies the officer of his intent to implement a suspension based on the Department's own investigation,[138] the impacted MPD employee can request a full hearing before the PFC. As with a citizen-initiated complaint, the Chief as complainant must prove the case from the beginning through a presentation of evidence. The PFC can then affirm, modify, or undo the disciplinary finding. This leaden process may explain why no cases in which the MPD has imposed discipline have been heard before the PFC for at least six years.

Indeed, we have been informed that the burdensome process provides a strong incentive for MPD to compromise serious suspension cases. For example, in the only case of recent vintage where MPD has sought to bring charges to the PFC, the City instead "settled" the case. The matter involved an officer whom MPD moved to terminate and who had been involved in a controversial officer-involved

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[137] Some have opined that the active role the PFC plays in scrutiny of promotions obviates the need for community involvement in the promotional process. However, the roles would not be duplicative: the community involvement would be to provide input to MPD on the best candidates for promotion prior to any decisions being made, while the PFC's role is to consider those recommendations for promotion already made by MPD.

[138] This could be the result of a complaint or a Department-generated allegation.

shooting; the settlement terms ended up being the subject of significant concern and controversy.[139]

The fact that no internal cases in at least six years have been brought to the PFC for review indicates a significant flaw in the disciplinary system. If MPD has such a strong aversion to proceeding to PFC, it will be highly motivated to "settle" all discipline cases. In fact, in our review of cases discussed more extensively in our discipline discussion, the majority of cases in which the discipline involved a suspension, MPD the case. The most common device for settling is to impose a suspension but then hold all or most of the suspension days "in abeyance," meaning that the officer is not actually suspended so long as he does not commit future transgressions.

In our experience in working with numerous police agencies, we have yet to encounter one like MPD where years have passed and no officer has challenged a disciplinary determination. It would be akin to a criminal justice system in which every defendant pleaded guilty. In policing it is difficult enough to remain firm in disciplining officers; if there is also strong reticence in participating in the post-disciplinary processes, the likely result is reduced accountability for officers.

> RECOMMENDATION 143: MPD and the independent auditor should continue to review the MPD disciplinary decisions on significant discipline to determine to what degree the PFC post-disciplinary process is impacting those decisions.

One structural impediment that exists to the current PFC hearing structure is the makeup of the PFC itself. Commissioners are appointed by the Mayor and often have additional full-time responsibilities. As a result, it could become a scheduling challenge to find time when the Commissioners could meet to hear any particular case. One ameliorative measure that has been discussed and implemented in other Wisconsin cities is to have the responsibility to conduct the hearing assigned to a hearing examiner. The hearing examiner would be able to more efficiently hear the case and make a recommendation on outcome to the

[139] The settlement allowed the officer to be employed for an additional sixty days and then allowed him to retire. The PFC challenged the settlement on the basis that they retained jurisdiction, since the officer was still a City employee. Before the court ruled on the challenge, the sixty days elapsed and the matter ended up being moot.

PFC. Case law in Wisconsin has approved this approach as long as the ultimate decision remains with the PFC.[140]

> RECOMMENDATION 144: The PFC should consider the routine use of hearing examiners for any complaints received by the community or MPD to conduct any hearings emanating from those complaints.

Currently in Madison, if a community member or elected stakeholder wishes to lodge a complaint with the PFC against the Chief of Police, the Commission would convene a hearing. The current mechanism provides no formal discovery process akin to civil litigation through which facts could be developed. As a result, the protagonist complainant is required to use the hearing process itself to develop facts and present the case.

Instead of requiring a complainant to proceed to a hearing conducted by the PFC itself, as was recently undertaken, PFC could refer any such future complaint to an outside independent investigator.That way, facts could be collected efficiently and objectively, and PFC and the complainant could rely on the facts developed during the investigation resulting in a streamlined hearing process. There is precedent for such a process in Madison; in the 1960's a complaint made by the Police Association against the Chief was referred out for an independent investigation.

When a complaint is lodged against the Chief or high-ranking command staff of a police agency, it presents questions regarding how an investigation can be effectively and fairly conducted. Obviously, there are challenges for any such investigation to be undertaken objectively by the agency itself. For that reason, most police agencies regularly assign such a complaint out to an outside investigation. For future complaints received by MPD or PFC against the Chief or high-ranking command staff, we recommend the same protocol.

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[140] While the use of hearing examiners could potentially streamline the PFC appeals process, the most effective way to ensure accountability is to conduct internal investigations that are thorough and objective. An independent auditor, which, as detailed below, is the cornerstone of our recommendation for oversight, would go far to achieve this objective by being able to review MPD internal investigations in real time and provide an independent perspective on case outcomes.

> RECOMMENDATION 145: When the PFC or MPD receives a complaint against the Chief of Police or high-ranking MPD command staff, it should consider retaining an outside investigator to conduct an independent investigation.

Another arena in which civilian oversight has become increasingly prominent is in policy development for law enforcement agencies. The relevant Wisconsin statute makes it clear that the PFC has the potential to set out changes in MPD policy, but only if a majority of Madison voters authorize it to do so. To date, there has been no citizen initiative to provide this additional authority to PFC.

It is noteworthy that Madison's Common Council has recently taken advantage of its own authority over MPD to initiate changes in Department policy. This development is a welcome one, pointing as it does to the greater willingness of elected officials to engage with police practices as part of their own responsibilities to the electorate. The concomitant acceptance of the recommendations by MPD is also heartening, and shows how other stakeholders can constructively assist the Chief in setting out officer expectations.[141]

While recognizing the roles that the PFC and (more recently) Common Council have played in providing oversight to MPD, there are additional areas where the City and the Department could benefit from the creation of a civilian oversight entity to provide further independent review. Our own work over the years – in different oversight capacities and with law enforcement agencies of varying sizes, histories, and challenges – has given us insight into the range of ways that independent civilians can and should have an influential voice in shaping how the police serve the community.

There are many oversight models throughout the country; they range in size, budget, scope of authority, and specific roles – and such variations are appropriate to the highly distinctive circumstances among jurisdictions. Some of the readily attainable ways that this process can occur include the following roles and responsibilities for an oversight model in Madison:

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[141] Madison also has a standing Public Safety Review Committee consisting of Alders and community members who also have the potential to suggest changes in policy. We are not aware, however, of any policy change recommendations of recent vintage coming out of this Committee.

- Providing a more facile independent mechanism for the receipt of complaints;
- Reviewing MPD internal misconduct investigations for completeness and objectivity;
- Providing independent recommendations on MPD internal investigation outcomes and accountability;
- Examining use of force investigations for thoroughness and fairness;
- Recommending individualized and systemic remediation in response to use of force incidents;
- Providing input into officer-involved shooting reviews, including:
    - Rolling out to the scene in the immediate aftermath of the incident for an initial briefing on events
    - Attending subsequent Department meetings at which the shooting is reviewed
    - Evaluating the strength of the administrative investigation
    - Recommending individualized accountability and remediation
    - Developing systemic remediation to export to all MPD officers
- Conducting independent systemic audits of MPD functions such as the hiring process, background investigations, promotional process, employee performance evaluations, adverse litigation results, recruiting and hiring practices, supervisor performance, special assignment selection processes, examining potential bias-based policing in stops or searches, stop and frisk practices, complaint intake procedures, use of the disciplinary matrix, MPD public reporting of data, and community outreach;
- Recommending improvements in policy and training;
- Regular public reporting of the independent auditor's findings;
- Ensuring that the adopted findings and recommendations of the current review process be implemented and sustained.

Ideally, these functions would occur in the context of an independent but collaborative relationship with the Department. Each of them has the potential to increase accountability and public confidence by adding a layer of outside

scrutiny and input. At the same time, though, each recognizes the resources, authority, training, expertise, and ultimate responsibility that lie with the Department itself. The contributions listed above can be structured to enhance transparency, public awareness and involvement, and the integrity of Department decision-making, all without usurping the Department's important role in public safety.

While there are many models and variations of oversight, a "hybrid" model would best serve Madison's unique needs. By this we mean a combined approach, with a professional police auditor's office providing consistent and knowledgeable "boots on the ground" review, and responsive to a civilian review body that is representative of and accessible to the community at a grassroots level.

In our view of the best approach, the auditor would be a full-time position and have the ability to provide input on individualized investigations as well as recommend systemic reform. The civilian review body would represent Madison communities, hold public meetings, conduct outreach, and work with the auditor to provide transparency through the issuance of public reports. Additionally, in order to be able to successfully accomplish its assigned tasks, any oversight mechanism must have the unfettered access to documents and MPD personnel (as we have benefitted from during this review). Finally, the oversight entity must have the ability and the mandate to regularly report to its public about its observations and recommendations.[142]

> RECOMMENDATION 146: Madison should enhance its civilian oversight by establishing an independent police auditor's office reporting to a civilian police review body.

[142] The Office of the Independent Monitor and Citizen Oversight Board in Denver best approaches the type of police oversight we envision for Madison.

RECOMMENDATIONS

1: In devising a strategic plan, MPD should consider the findings and recommendation in this report to the degree they suggest paths toward further improvement and seek input and assistance in its development from all MPD employees, city stakeholders, and the Madison community.

2: MPD should continue its active role in collaborative programs that address systemic inequity, like the "Unpaid Ticket Resolution Days," and set internal goals for accomplishing such events each year.

3: MPD should commit to a re-energized Racial Disparity Impact Committee, and should provide both incentives for participation and continued organizational support for its efforts and specific initiatives.

4: Through resources and other forms of messaging, MPD management should enhance its structural and philosophical commitment to the Judgment Under the Radar program as a means of reinforcing its important work.

5: Should future presentations by Judgment Under the Radar (or any other group) touching on bias be met with strongly negative reactions, MPD leadership should assess the underpinnings of the behavior.

6: The City should move apace to providing a translation function for its website so that MPD's information (as well as other City information) can be more facilely accessed and used by persons with limited English proficiency.

7: The CORE Team should take advantage of its centralized role in sponsoring and monitoring MPD outreach, and should work to provide rigorous analysis of individual initiatives as to their relative impact and effectiveness.

8: MPD should work to effectively support and incorporate officer-driven outreach efforts within specific communities, such as Amigos en Azul, into its larger community policing strategies.

9: MPD and the City should discuss the most efficacious way to analyze the demographic data regularly being collected on arrests, summons, and use of force.

10: MPD should consider implementing the 21st Century Policing Task Force's Action Item to make all department policies available for public review.

11: As part of its ongoing and constructive support of an innovative program, MPD should dialogue with its criminal justice partners to consider whether restorative justice programs available for controversial high media profile incidents can be made available for similar incidents that do not rise to the same level of media attention.

12: MPD should continue to constructively engage with its community by increasing its emphasis on participating in community-initiated events.

13: MPD should conduct town halls and listening sessions after all critical incidents, including officer-involved shootings as follows:
- In the first few days subsequent to an incident, MPD should be empathetic to any resulting death or serious injury, explain the investigative and review process, and listen to any expressions of upset or concern.
- After the conclusion of the investigation, MPD should provide a public debriefing of the incident, highlighting any performance issues that were identified for improvement and reform.

14: MPD should seek to engage with its community regarding controversial events, including officer conduct that does not reflect its core values or best performance.

15: MPD should relax its uniform requirement permitting personnel to appear out of uniform on duty at appropriate community events.

16: MPD should devise additional ways to solicit and encourage feedback from all of its communities regarding the performance of the Department.

17: MPD should devise a feedback loop for its criminal justice partners regarding the performance of its officers and the Department as a whole including the District Attorney, Sheriff, Judges, Public Defenders, Juvenile Justice Administrators, Probation Officers, and Social Workers.

18: MPD should revise policy discouraging the use of family, friends, or bystanders to serve as translators, except when MPD or City resources are not available and the situation is exigent. In cases in which civilians are used as translators, the non-availability of other MPD resources should be documented.

19: MPD should devise policy instructing its officers not to request social workers to provide translation services unless there is a pre-existing understanding with the social services agency that they agree to do so.

20: MPD should devise ways to incentivize its bilingual officers to assist in providing translation assistance in the field, including consideration of adopting a pay differential.

21: MPD should audit its officers' use of the City's telephonic translator program to gauge its level of effectiveness for police matters, and make suggestions for reform as needed.

22: MPD should continue to expand its efforts to create local Captain's Advisory Groups.

23: MPD should continue to dialogue with the City's Rapid Response Team to further develop a productive working relationship, and to assist in the Team's overarching objective of enhancing trust and providing additional services to the community victimized by a major crime.

24: MPD should implement the Special Community/Police Task Force Recommendation to conduct random reviews of footage to evaluate officer performance.

25: MPD should implement the Special Community/Police Task Force Recommendation to train detectives and officers in the use of trauma-informed interviewing skills.

26: MPD should implement the Special Community/Police Task Force Recommendation to explore Scotland's de-escalation methods and the United Kingdom's national decision-making model for police, and adapt these concepts productively to its own policing challenges.

27: MPD should continue to consider and review the Special Community/Police Task Force Recommendations to further integrate them into MPD culture, and to embrace the spirit and underlying rationale with which they were made.

28: MPD should continue to work with the City, County and its members to recognize crime as yet another danger to public health and to develop further strategies of prevention and remediation consistent with the model.

29: Consistent with this Report, MPD should develop formal mechanisms whereby a broader group of community stakeholders are brought into the selection process for special assignment officers.

30: Consistent with this Report, MPD should routinely seek input from community stakeholders and professionals regarding the performance of officers assigned to specialized units.

31: With input from the community, each specialized MPD unit that has not already done so should devise a mission statement setting out the core objectives of the unit.

32: With community and City stakeholder input, MPD should devise a media release policy setting out objective parameters regarding when information about arrests of persons will be proactively publicly released.

33: In publishing information about "shots fired" calls, MPD should include whether the call led to an arrest, revealed corroborating information, or had no further corroboration beyond the initial call.

34: MPD should consider resource neutral ways to supplement the staffing of their facilities so that they can be open for public access for longer hours.

35: MPD should dialogue with the City and the University of Wisconsin Law School to identify ways that law students can be reintegrated into the Department's learning and problem-solving functions.

36: In selecting neighborhood officers, MPD should broaden its selection process to include City stakeholders and representatives of the community.

37: MPD should ensure an effective transition between the outgoing and newly-assigned neighborhood officers.

38: MPD should have its Neighborhood Officers (and all specialized officers) prepare daily activity logs of their performance.

39: In order to be able to gain an evidenced-based understanding of patrol officers' problem-oriented policing activity, MPD should institute daily activity logs for patrol officers.

40: MPD should develop evaluative metrics consistent with the stated mission of neighborhood officers and prepare at least annual performance evaluations based on those metrics.

41: MPD should regularly seek input from City stakeholders and representatives of the community in evaluating the performance of its Neighborhood Officers on at least an annual basis.

42: MPD should devise ways to consistently publicize the community policing activities of its patrol officers as well as special assignment personnel.

43: MPD's executive leadership should pursue ways to utilize its neighborhood officers in developing, facilitating, and measuring specific problem-oriented policing projects.

44: MPD should commit to a newly robust and collaborative engagement with the City of Madison's Neighborhood Resource Teams in establishing new goals and performance measures for proactive problem solving.

45: With regard to field assignments MPD should find ways to take full advantage of officers identified as practicing problem-oriented policing, such as having them provide modeling opportunities, be involved in training community policing concepts and otherwise effectively export their policing strategies to other officers.

46: MPD should evaluate the substantive work of its individual Community Policing Teams, and consider changing the name of the team(s) as needed to better reflect their work.

47: MPD should have the CPT officers prepare daily logs of their activity.

48: MPD should regularly review the activity of its Educational Resource Officers to determine whether the appropriate balance between prevention, problem oriented policing, and enforcement is being achieved.

49: MPD should work with school district administrators to ensure congruity of purpose with regard to mission and responsibility of EROs in the school setting.

50: In selecting EROs, MPD should broaden its selection process to include faculty, juvenile justice partners, and student leaders.

51: MPD should regularly seek input from school stakeholders and juvenile justice partners in evaluating the performance of its EROs on at least an annual basis.

52: MPD should collaborate with the school district in better communicating to the public the range of services it provides in the individual high schools.

53: MPD should closely review arrest and citations issued by EROs to ensure that officers appropriately use their discretion and do not unnecessarily enter juveniles into the criminal justice system.

54: MPD should develop a Field Training Officer program for its newly assigned EROs in order to foster transfer of skills and orientation of high functioning outgoing officers.

55: MPD should consider specialized training for its EROs in the arena of dealing with students who have identified behavioral/emotional issues.

56: The City should dialogue with the Police Officers' Association in order to amend the current contractual agreement so that EROs (and other specialized officers who are focused on community policing such as Neighborhood Officers, Mental Health Officers, and Community Policing Teams) who have established effective working relationships in their specific assignments, as determined by input from Department supervisors, the officers themselves, and stakeholders at the respective campuses can remain beyond five years.

57: MPD should consider moving to a "soft" alternative uniform for EROs, as a means of reinforcing the unique mission of these officers in the school setting.

58: The Mental Health Team should develop guidelines or protocols for periodically reviewing mental health safety bulletins and associated alerts to assess whether they should be amended or purged from the system.

59: MPD should consider promoting regular communication to the public about the activities of its Mental Health Team by, among other methods, including a sample narrative of the team's activities in the daily crime blog.

60: MPD should devise methods to fully document the daily activity of MHOs, in part to facilitate a larger internal and external discussion about whether those activities are necessarily or best handled by police officers.

61: MPD should quickly fill the position of Mental Health Team sergeant and should maintain funding for this position to ensure effective supervision of the team.

62: MPD should continue to integrate use of force training scenarios with scenarios involving someone in a mental health crisis.

63: MPD should cross-train patrol tactics and force instructors to also run and debrief mental health crisis scenarios to strengthen the Department's message around the importance of de-escalation in crisis situations, even in those scenarios when officers also need to consider force options.

64: MPD should amend its SOP on Mental Health Incidents/Crises by breaking it into separate policies that would address separate topics, and would specifically include the tactical principles the Department trains and expects its officers to employ in addressing situations involving individuals in mental health crisis.

65: MPD should look for innovative ways to fill the critical gaps in its efforts to collect data on mental health contacts with police.

66: The MPD Mental Health Team should develop a set of clearly-defined performance measures that can be consistently tracked and monitored to provide benchmarks for how the Department and the community define success for the mental health program.

67: The MPD Mental Health Team should work to integrate its volunteer assistants with Department resources in a way that provides consistency in data gathering and analysis tasks.

68: MPD should clarify its officer-involved critical incident SOP to ensure that, absent extraordinary circumstances, investigators should obtain a statement from involved and witness officers prior to release from shift.

69: MPD should clarify its SOP on officer-involved deaths and other critical incidents to ensure that investigators obtain a statement from involved and witness officers prior to providing the officers opportunity to review any recording of the incident.

70: MPD should review DCI protocols regarding contact with family members after an officer-involved shooting and integrate them into its own officer-involved critical incident protocols.

71: The City and MPD should consider using the Rapid Response Team as a resource in the specific context of interacting with family members after an officer-involved shooting.

72: MPD should create guidelines within its officer-involved critical incident SOP to address the concerns of witnesses to the incident.

73: MPD should automatically conduct an administrative investigation of all officer-involved shootings and other critical incidents separate from any criminal investigation, including, at a minimum, re-interviewing involved and witness officers.

74: If the criminal investigation has not obtained a full account of the observations of the on-scene emergency medical providers, MPD should interview them as part of the administrative investigation.

75: MPD should develop a robust review process after a critical incident such as an officer-involved shooting that examines the incident through the lenses of performance, training, supervision, equipment and accountability. The review process should consider pre-incident decision making and tactics, the use of force, and post-incident response, including the provision of medical care and communication with family members. The review process should include the development of a corrective remedial plan designed to identify and address any issues identified.

76: After a civil judgment or significant settlement involving MPD activity, the Department and its attorneys should convene a meeting intended to holistically review the incident and any insight learned from the litigation process itself, and should devise a public corrective action plan that addresses any policy, performance, training, supervision, investigative, and equipment issues identified during the course of the litigation.

77: The City should have regular dialogue with its police liability insurer to examine what risk management initiatives might result in lower premiums or could be funded by the insurer.

78: MPD should make clear through policy and training that an officer who witnesses another officer use force is required to report it and document his or her observations in a supplemental report.

79: MPD should amend its force reporting protocols so that, for certain categories of force, supervisors are required to conduct a separate investigation meeting basic investigative standards sufficient for a thorough and complete review of the incident and the events leading up to it.

80: MPD should adopt policy requiring a supervisor to evaluate whether each use of force was within policy, as well as compliance with any other policies implicated such as the foot pursuit or de-escalation policies, with a supporting analytical narrative that also demonstrates a holistic review of all the circumstances surrounding the use of force.

81: In evaluating force incidents, MPD should go beyond a determination of whether the use of force met a Constitutional standard or was in consistent with Department policy, to also identify any tactical or other performance issues, and determine whether additional remedial action – such as discipline, training, or debriefing – is appropriate.

82: On selected force incidents, MPD should convene a panel to roundtable the incident, to identify training, policy, supervision, and equipment issues, and to develop an appropriate after-action plan.

83: MPD should identify and publicly commend officers who practice de-escalation techniques and problem oriented policing.

84: MPD should regularly evaluate its use of force training to make sure it continues to be consistent with best practices, maximizes its ability to meet the demands of the Madison community, and is considered by officers to be effective at preparing them for real-life encounters.

85: MPD should reevaluate its training regarding the implications of the reactionary gap principle, focusing on principles of officer safety such as cover and distance to ensure that officer tactics and deployment minimizes the need to use deadly force.

86: MPD should consider when it is appropriate to begin employing documented accountability measures for officers and sergeants who fail to comply with the requirement for entering force incidents into the use of force database.

87: MPD should further break down its published use of force data by district and shift to ensure that Department leaders are focused on where and when officers use force most frequently.

88: MPD should proactively seek input from City stakeholders and the public before completion and implementation of any new policies or changes to its existing policies.

89: MPD should modify its use of force policies to more clearly instruct officers on the duty to employ tactical alternatives to force, and to make clear the Department's expectation that officer follow tactical principles of officer safety.

90: MPD should publicize to its officers and its community its commitment and willingness to go beyond the Graham v. Connor standards when it further refines its policies relating to the use of force.

91: MPD should amend its Electronic Control Device Use SOP to limit ECD use to circumstances involving violent or assaultive subjects, or to prevent subjects from harming themselves or others.

92: MPD should modify its ECD guidelines to prohibit ECD use on women obviously pregnant, elderly individuals, obvious juveniles, individuals on stairwells, rooftops, or other elevated positions, and bicyclists.

93: MPD should modify its ECD guidelines to require officers to re-assess the threat posed by an individual prior to any successive ECD application.

94: MPD should modify its ECD guidelines to preclude officers from deploying more than three ECD applications on an individual, or a prolonged single application lasting longer than five seconds

95: MPD should modify its ECD guidelines to preclude multiple officers from simultaneously deploying their ECDs on an individual.

96: MPD should modify its ECD guidelines to require medical clearance for all subjects on whom an ECD has been used, and to have ECD darts removed by medical personnel.

97: MPD should amend its SOP on Foot Pursuits to fully address the safety concerns associated with chasing a suspect without communicating with dispatch, solo foot pursuits, pursuing in unfamiliar areas or after losing sight of the suspect, and chasing a suspect while not in full patrol uniform and gear.

98: MPD should amend its use of deadly force policy to eliminate authorization for shooting to prevent escape, or in any situation that does not present an imminent threat of death or great bodily harm to identifiable officers or third parties.

99: MPD should modify its prohibition on shooting at moving vehicles to make it clear that discharging a firearm at a moving vehicle is prohibited unless an individual in the car poses an immediate threat of death or serious bodily harm by means other than the vehicle, and that officers have a duty to move out of the path of a moving vehicle.

100: The Use of Force Coordinator and executives assessing force should regularly reevaluate the SOPs governing uses of force in light of the facts and circumstances of the incidents they review, making amendments as necessary.

101: MPD should engage in regular internal assessments (such as surveys) and other feedback opportunities, to ensure that issues relating to minority status within the Department are not adversely affecting individuals or groups, and to continue seeking potential remedies and reforms when such dynamics arise.

102: MPD should assess its recruit training programs and patrol deployment strategies with an eye toward supporting and taking positive advantage of the unique perspectives and life experiences of its officers of color.

103: The Madison Professional Police Officers Association should make efforts to enlist greater participation by officers of color, including in leadership positions.

104: The City should work to revise the current agreement with the Police Association in order to provide MPD more flexibility regarding shift and location assignment of officers.

105: MPD should reinstitute an officer performance evaluation system that collects and incentivizes progressive policing activity.

106: MPD should regularly audit performance evaluations to ensure that supervisors are uniformly documenting officer activity objectively and fairly.

107: MPD should change its current SOP to require presentation and signature of the consent to search forms prior to executing a voluntary search.

108: MPD should work with the City and the Professional Police Officers' Association to consider the feasibility of moving sergeants to the Association of Madison Police Supervisors.

109: MPD training staff should work with the Dane County Department of Public Safety Communications to establish a regular schedule for teaching at the quarterly communicators' in-service training at least once a year.

110: MPD should work with Dane County 911 center to develop scenario-based interagency training to better integrate the functions of patrol officers and dispatchers, particularly with regard to calls for service involving persons in mental health crises.

111: When MPD convenes a critical incident review, communications issues involving dispatch should be among the topics reviewed, and in cases where the effectiveness of communications is in issue, managers from the Dane County 911 center should be invited to participate.

112: MPD should continue to strive for a diverse recruitment and hiring program, and should regularly assess its criteria and any other hiring process to ensure there is no unnecessary exclusion of persons who otherwise might be excellent officers.

113: MPD should regularly seek input from its contract psychologists about ways to improve the background investigation process, both with respect to particular individuals' applications and more broadly on a systemic basis.

114: MPD should engage community members at the interview stage of its promotional process.

115: MPD should consider modifying its Academy in order to provide students with non-police social service work exposure in the City's diverse communities prior to graduation.

116: MPD should study whether the Academy class ranking system has a disparate impact on persons from diverse backgrounds.

117: MPD should consider whether using Academy class rank for purposes of seniority places outsized importance on such criteria, or whether there are alternatives for determining the "seniority" of students from the same class.

118: MPD should regularly solicit the Madison community for topics to be presented at the pre-service Academy or during in-service training.

119: MPD should consider more frequent and regular use of training bulletins as a mechanism for training staff to more regularly communicate with officers on timely topics relating to tactics, equipment, or other issues of concern.

120: MPD should continue to examine training protocols throughout the country and use that review to continue to improve its well-functioning training.

121: MPD should seek, encourage, and provide additional training opportunities outside the Department, particularly leadership training for first level supervisors.

122: MPD should provide accessible literature at its stations encouraging feedback regarding the performance of its officers, including blank complaint and commendation forms.

123: MPD should remove the 90-day limit from its SOP on investigation of complaints and investigate all complaints that allege a violation of rules.

124: MPD should expressly codify its current practice by indicating in its SOP that it is committed to investigating anonymous complaints.

125: MPD's SOPs should be revised so that every complaint alleging a policy violation should receive a PSIA number.

126: MPD should change its policy so that all interviews of victims, witnesses, or complainants to internal investigations that could result in discipline are recorded unless the situation proves impossible or if a civilian witness declines.

127: MPD should ensure that violations of integrity are appropriately charged as such in the disciplinary process.

128: MPD should consider whether there is sufficient accountability in its disciplinary process regarding violations of integrity and force.

129: MPD should expand its restorative justice disciplinary program to authorize and address courtesy violations or other low-level violations involving police/civilian contacts.

130: MPD and the City should devise and promote a mediation program to resolve civilian complaints outside of the traditional disciplinary process.

131: PSIA should continue and build upon its current practice of post-investigation complainant outreach, including the evaluation of cases for possible informal discussion opportunities with involved parties.

132: MPD should regularly evaluate serious disciplinary cases to determine whether, pursuant to Department policy, they should be subject to proactive release.

133: Rather than rely entirely on the computer to identify early intervention candidates, MPD's Early Intervention System should regularly request first-level supervisors to identify officers who might benefit from the remedial aspects of the program.

134: MPD should press forward toward full implementation of its Early Intervention System.

135: Before a body-worn camera pilot project is implemented, MPD should seek the input of stakeholders—including City leaders, prosecutors and defense attorneys, civil rights litigators, privacy advocates, the community at large, and rank-and-file officers—to identify and prioritize, to the extent possible,

the intended benefits and potential drawbacks of any body-worn camera adoption.

136: Before a body-worn camera pilot project is implemented, MPD should work with stakeholders to develop policies for that implementation consistent with the principles set out in this Report, and with intended benefits identified and prioritized in a manner consistent with the prior Recommendation.

137: If the pending Wisconsin legislation regarding body-worn cameras is enacted in its current form, Madison should delay implementation of any pilot program until the implications of the legislation on release of body camera footage can be assessed.

138: Assuming a reasonable consensus can be reached on policy, Madison stakeholders should remain open to funding a body-worn camera pilot project.

139: If MPD adopts body-worn cameras, it should commit to periodic evaluations (e.g., a one-year, three-year, and five-year review) to assess the qualitative and quantitative impact of the technology on the agency and stakeholders. Such periodic reviews should seek to identify whether the agency should continue its program and, if so, whether policy revisions are necessary to achieve or maximize the identified benefits.

140: While retaining the ultimate determination on selecting the Chief, the PFC should consider ways to involve the Madison community in the selection process through community panels and interviews.

141: The City should institute protocols calling for a performance evaluation process for the Chief of Police at fixed intervals, with the evaluation being a potential basis for a finding of "cause" should the Chief's performance fall significantly below community expectations.

142: The City should consider whether to consult with its state legislative representative to propose amending the PFC statute so that the Chief of Police serves a fixed term, subject to renewal by the PFC.

143: MPD and the independent auditor should continue to review the MPD disciplinary decisions on significant discipline to determine to what degree the PFC post-disciplinary process is impacting those decisions.

144: The PFC should consider the routine use of hearing examiners for any complaints received by the community or MPD to conduct any hearings emanating from those complaints.

145: When the PFC or MPD receives a complaint against the Chief of Police or high-ranking MPD command staff, it should consider retaining an outside investigator to conduct an independent investigation.

146: Madison should enhance its civilian oversight by establishing an independent police auditor's office reporting to a civilian police review body.

Appendix:

OIR Group Outreach to the Madison Community

OIR GROUP

OUTREACH TO THE MADISON COMMUNITY

Community-based groups and individuals

Ad Hoc Committee – 15 members
Meriter Foundation
Dr. Greg Gelembiuk
ACLU of Wisconsin
Community Resource Team
Freedom Inc.: M Adams
Wisconsin Hmong Association
Meadowood Neighborhood Association
Midvale Heights Neighborhood Watch Representatives
Nehemiah

- Anthony Ward
- Karen Reece
- Reverend Alex Gee
- Harry Hawkins

Michael Johnson: Boys and Girls Club
Unidos against DV
United Way Coalition (Gregg Jones, Theresa Sanders)
Tenant Resource Center
West-Side Public Safety Town Hall Meeting
Dr. Ruben Anthony: Urban League
Dr. Floyd Rose
Bishop Harold Rayford

Listening Sessions

Freedom, Inc. (2)

Jerome Flowers: Listening session with community members at Christ the Solid Rock Baptist Church

10 Black Mothers (Corinda Rainey Moore, Jackie Hunt)

Madison-area Urban Ministry (Just Bakery): Reentry

Z! Haukness: Listening session with homeless representatives

Community Meetings Attended

Latino Support Network

Public Safety Response Meeting

Midvale Heights Neighborhood Meeting

Restorative Justice initiatives

Dane County Juvenile Justice Center

- Andre Johnson
- Jim Moeser

John Bauman

Restorative Justice Court

- Ron Johnson
- Judge Daniel Koval

Institutional stakeholders

Mayor Paul Soglin

Deputy Mayor Gloria Reyes

Alders (12)

Dane County 911 Communications Center

Dane County Human Resources Officials

Dane County Commissioner Leland Pan

Madison Metro School District

- Administration
- School Board member

PFC members (3)

Scott Herrick (PFC Counsel)

Public Defender's Office (3)

Victims' advocate – District Attorney's office

Rep. Chris Taylor
Professor Herman Goldstein
City Risk Management
City Department of Civil Rights

- Toriana Pettaway, “Equity Coordinator”

City Police Staffing Study/Department of Finance
City Insurer
City Attorney
Dr. Ken Robbins: Contract Psychologist
Mayor’s Office “Neighborhood Resource Coordinator” Tariq Saqqaf

Institutional Meetings

Police and Fire Commission Meeting
Alder President Sub-Committee Meeting
Madison Public Safety Review Committee

University of Wisconsin-Madison partners/stakeholders

UW nursing professor Linda Oakley (mental health issues)
UW psychologist Patricia Devine (unconscious bias issues)
UW law professor Jonathon Scharrer (restorative justice issues)
UW law school Cecilia Klingele (police practices, community policing)
UW former law professor Michael Scott (telephonic)

Law enforcement-related contacts

District Attorney Ismael Ozanne
Sheriff David Mahoney
Janesville PD Chief of Police
Middleton PD/Dane County Chief’s Association (Chief Foulke)
Wisconsin DOJ/DCI
Wisconsin PPA (Jim Palmer)
Cheri Maples (retired MPD Captain)
David Couper (retired MPD Chief)
Cameron McLay (retired MPD Captain)
Sue Riseling (retired UW Police Chief)
Kristin Roman (current UW Police Chief)
Joe Balles (retired MPD Captain)

Noble Wray (retired MPD Chief)
USDOJ Diversity in Hiring
Office of United States Attorney

MPD

MPD Command Staff
MPD Chief of Police
Dispatch and Communications
K-9
Homeless Liaisons
Ride Alongs
Data Maintenance and Collection
Use of Force Coordinator
PSIA: Internal investigations
Training (Attended Academy Training)
Recruiting/Hiring
MPD Budget Manager
MPD Public Information Officer
CIT Training
Mental Health Officers
Community Policing Teams
CORE Team
Neighborhood Officers
Officer Advisory Committee
Racial Disparity Impact Committee
Educational Resource Officers