



Policing Advisory Commission

Monday, Dec 6, 2021

Virtual Meeting

6:30 – 8:00 pm

Meeting Minutes

Commission Members Present: Robin Gaster, Jenn Lynn, Alicia Hudson, Caroline Fredrickson, Jerome Price, Eric Sterling, Shabab Mirza, Dalbin Osorio, Vernon Ricks, Cherri Branson

Ex-officio Members Present: Cate Brewer, Carmen Facciolo

Commission Members Absent: Nadia Salazar

Support Staff: Susan Farag, Carlos Camacho

Guests: Heidi Rhodes (JUFJ), Lisa Mandel-Trupp (CM Katz' Office), C.M. James III, Robert Landau (SSJC), Mike German (Brennan Center for Justice at NYU Law School), Lillian Cruz (CM Albornoz' Office), Peter Francis

Meeting was called to order at 6:35pm

Agenda:

1. Attendance/Recording of Meeting/Administrative Items

- Mr. Camacho took attendance and began recording the meeting. All guests were asked to enter their name, any organizational affiliation, and contact info into the chat. Guests were invited to share their thoughts and comments in the chat with the understanding that Commissioners may keep these for their own records and that comments may be made public in the event of an MPIA request.

2. Guest Speaker, Mike German, Fellow with the Brennan Center for Justice's Liberty & National Security Program at NYU University.

- Was previously an FBI agent for 15 years, including doing undercover work into White Supremacist and far-right militia groups. At the beginning of the multi-agency operation, it was clear that there were people within law enforcement that were sympathetic to these groups, so had to be careful who was involved in this operation and who was made privy to the operation.
 - There was a 2006 FBI internal memo that documented this warning and that there was a persistent effort by white supremacist groups to infiltrate law enforcement. The document doesn't highlight the risk to the public but only to FBI investigations. There was no policy to address white supremacist officers policing communities.
- Seems like every 10 year the FBI puts out a warning regarding this issue but has not put in a policy to address it, despite having plenty of jurisdiction to put a national strategy in place.
- Wrote a report called [Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement](#), which outlines not only FBI knowledge of the issue but other cases of people with direct affiliation with white supremacist or right-wing militant groups were discovered within law enforcement by the public. Often, a public scandal will erupt when these stories surface but it turns out that these

affiliations to these groups were well known to law enforcement before the scandal. But no action is taken prior to the public becoming aware. Report makes recommendations for reform:

- Confront the problem head on before there is a public scandal. Create a clear policy that maintains clear constitutional employer rights, while also delineating when employees are in violation of the policy.
- Not just law enforcement responsibility to police this activity but that prosecutors have a role too to make sure that the history and personnel records of law enforcement is known and the integrity of officers with links to these groups can be questioned.
- For DOJ, they should come up with a national strategy to address the issue. FBI has acknowledged that this problem is persistent but they have not come up with a national strategy to address it. Congress has given DOJ broad authority to address this issue.
- When the report came out Rep. Jamie Raskin within the House Oversight Committee held a hearing to address the issue of white supremacy in law enforcement. He asked the FBI to update their 2006 document outlining the problem but they disavowed the 2006 report, failed to acknowledge this as a problem, and refused to testify. Then the Jan 6 assault on the Capitol happened, so that changed that calculus and the FBI did end up updating the document and said this was still a persistent problem. This highlights the reluctance of FBI leaders to acknowledge and address the issue.
- One of the responses you often get is that officers have freedom of speech rights but there are limits to those rights as an officer and as an employee of the govt. You have a right to hold those beliefs and speak out but you don't have a right to be a police officer. Efforts to fire or discipline these officers have been upheld all across the country.
- You will hear from law enforcement agencies that they don't have the capacity or the interest to get inside the mind of officers to see who harbors hate, or monitor their off duty social media activities. The truth of the matter is that these proclivities are often well known. The worry are not those that can keep these associations separate from their work but those that display racist behavior on the job and put people in peril.
- There is structural discrimination is present because when an officer makes a complaint about racial discrimination on the police force, the agencies first instinct is to defend itself or the person accused and take retaliatory actions against the accuser. These complaints are opportunities to address these issues within a department.
 - A key recommendation is strengthening whistle blower protections. Right now, it is more dangerous to call out a fellow colleague for racist behavior than to actually engage in racist behavior.
- Dr. Gaster – What would you recommend for County-level reforms? What should MoCo and MCPD do about this problem.
 - Mr. German – It is important to understand the existing policies in place and create explicit policies that address this issue by strengthening whistle blower protections and reporting from the public to protect against retaliation for filing a complaint against a police officer. It is important to have a policy outlining what an officer should consider before deciding to join an organization.
 - Dr. Gaster – is there a list of domestic terrorist organizations identified by FBI or DOJ that could be a useful proxy or reference?
 - Mr. German – Because these groups often change their name, a list wouldn't be a useful tool and that is why the FBI doesn't have a list of domestic terrorist group because it would be under-inclusive and over-inclusive at the same time. The policy needs to be behavior focused not group focused. Terrorism is usually politically focused and are treated as terrorists because of political reasons.
- Ms. Branson – Concerned about where the lines blur, how do you deal with sympathizers and those who may not be explicitly showing racist behavior but condone that type of thinking?
 - Mr. German – The easiest way for law enforcement agencies should be actually address the complaints that are made and not just try to defend against them. There need to be a change in the attitude of law enforcement leadership to look into these complaints and get info from

the rank and file because they know who these officers are. Make it clear to the force that if racist misconduct is discovered that was not reported, officers will be disciplined, even bystander officers who may not have directly engaged in the conduct. Its law enforcement officer's obligation to report these incidents and its leadership's obligation to protect those who report these incidents. Leadership needs to look at this issue with the number one priority of protecting the public from racist police officers.

- Mr. Price - You speak of the structural discrimination within the force and the seemingly lack of urgency to respond to an incident like the Jan 6 attack on the Capitol. Have you seen any evidence of a shift in local police department structures or policies post the Jan 6 insurrection?
 - Mr. German – Wish I could say I have seen a shift but racism and white supremacy isn't just a police problem, this is a larger societal issue. There has been some downplaying of the event by Congressmembers and some police departments. Also, the Justice Dept is treating Jan 6 as a spontaneous, one-time event but this was the culmination of many different events (e.g. Charlottesville, Oregon, Huntington Beach, Sacramento, etc.) and four years' worth of building up to Jan 6. Two weeks before the assault on the Capital there was a far-right assault on the Oregon legislature. It would make DOJ look worst if they acknowledge all this previous violence because then people could question why they weren't looking into this before Jan 6. There is a deep ideological bias within law enforcement, which can be seen from the anti-mask/vax movement in law enforcement even when COVID has killed twice as many officers than any other on-duty cause of death.
- Ms. Hudson – To Dr. Gaster's point, what do you think about the potential success of a generic reference to "groups engaging in, sympathizing with, advocating supremacist principles and ideology? Is that achievable or something worth-while looking at as a screening mechanism?
 - Mr. German – As a screening tool, that could be a useful question to ask. I would caution you that from spending a lot of time within the law enforcement community, law enforcement isn't really concerned white supremacists, they care about Black Lives Matter and Muslim populations (due to counter-terrorism training). So, if we create these lists they are going to be over-inclusive of groups that may not actually be a threat and under-inclusive of other organizations that are a problem. We need to focus more on behavior and criminality – organizations that commit crimes. Complaints should be treated as an opportunity to address these issues within a police department and complainants should be protected.
 - Mr. German – Many times this isn't well hidden and, in many instances, done through social media through law enforcement groups. There was an [expose from ProPublica](#) on Border Patrol agents posting commenting on social media joking about migrant deaths and other inappropriate topics, and the head of Border Patrol was on that forum.
 - Ms. Hudson – There has been a lot of discussion of focusing on training. Can implicit bias training and other forms or training actually help?
 - Mr. German – Training can certainly help but it really depends on who is the trainer and what is the content of the training. Sometimes the training is the problem. PAC should be able to see what the training is or compel some type of independent review of training. There are some issues and questions about the effectiveness of implicit bias training but what is also concerning is that some of these trainings intentionally do not address explicit bias/racism because they fear that this will turn off the audience. Not addressing the explicit or overt bias would undermine any implicit bias training.
- Ms. Mirza – There is no way to demand change, we can incentivize change but we cannot demand it. Whistleblower protections can help but am less convinced that cultural change can actually happen or will make a difference. Are there mechanisms outside of the formal system that can be used? Or is there a way for DOJ to take this issue directly on or ways for citizens to take complaints directly to them rather than going through a police department? Do you know of community-based interventions and direct lines of communication to the Federal govt outside of the formal complaint process?
 - Mr. German – Need to focus on the data that is available and through whistle blower protections you can get increased reporting and create a system that actually rewards that. There is a mechanism to report complaints directly to DOJ but the investigations are usually

rote and the declination rate to investigate/prosecute is in the mid 90% so Federal Prosecutors largely does not pursue those cases. I think bringing in the state and local prosecutors office is important to make them aware of these issues/complaints.

- Dr. Gaster – In terms of implicit bias training, don't think you should be training racist police officer, you need to get rid of them. With implicit bias, you are training officers to recognize their implicit bias, which we all have, and how to deal with it and manage it. I think it's unfair to say that they are ignoring racist, I think they are hoping they don't have racists and they are trying to train non-racist police officers to be better. If we are tracking officer activities correctly, it's not just complaints we should look at. We should be able to see patterns in what officers are doing. Body cams can help with that. I think we may want to focus on collecting data that may be able to show us objective evidence of racism in police activity.
 - Mr. German – It's not that implicit bias training would be directed toward racists, it's that they don't acknowledge that explicit bias exists in law enforcement. Data on police stops, arrests, etc. is usually collected by large police departments and it invariably shows disparities but the police will say that's because that's who is committing the crimes, not because we are biased. If you are training people to recognize implicit bias and they are sitting next to officers who are explicitly racist and but you are not acknowledging this explicit racism, this creates a disconnect and not effective training. If are not willing to address that explicit bias is part of the problem with these disparities then you are ignoring what the real problem is.
- Ms. Branson – People generally don't want to make their friends uncomfortable. Police work has this mythology of comradery and having each other's backs so that's why folks may not want to address this explicit racism, for issues of self-preservation. But then this becomes someone else's responsibility to address. The only way to change this culture is to dismantle it and the way you dismantle it is by changing who does the training because bad habits are passed down. We should not have police training police or police investigating citizen complaints against police. Do you believe it would be helpful to have outside entities train the police and review the complaints? We have heard of incredibly long timelines to review complaints that are sealed up upon completion.
 - Mike German – The more independence you have with regards to reviewing citizen complaints is essential, particularly in terms of preventing retaliation. In NY, the Brennan Center helped create an Independent Inspector General in the NYPD, so that's one mechanism to improve independence in investigations. Also, can create a statewide system to prevent local investigation. Involving prosecutors is always helpful because they have a responsibility within their office and an ethical responsibly as lawyers so that creates more scrutiny.
- Mr. Osorio – You cited a lot of examples of the role leadership has played in changing culture. I'm curious, how to work with leadership to hold officers accountable.
 - Mr. German – Leaders have a difficult problem because they have to work with rank and file and unions, as well as responding to community concerns. Can approach it by explaining how this helpful to Police Chief's. Have had conversations with Police leadership who feel disempowered to address them because the penalty that they'll face if they address it head on is worse than the problem itself. We have to convince them otherwise. Should hold the managers responsible for holding their officers responsible and corrected, which isn't always through discipline but can involve reassignment and good management techniques. For example, Derek Chauvin should never have been training young officers while having 17 complaints against his conduct. PAC should work with the police but also let them know that they are going to be held accountable to the community.
- Mr. Sterling – Can you think of language that has been adopted in other jurisdictions that would help carry out the approach that think would help?
 - Mr. German – It would be difficult to take a model from one place and implement it elsewhere because laws and policies differ from place to place. It should be up to the PAC, the Chief, and legal authorities to address this now before there is a public scandal. We need to make the policies clearer for police officers and unions and also so policies are vetted so they are not being created on the fly trying to address a problem beyond the scope they are intended to address.

- Ms. Branson – We would have to change the County procurement policies in order to change the way the police would hire outside consultant training because it is up to the procuring agency to put together the RFP and make the decision. Procurement would have to come from an outside agency in order to get the change we would want.

3. New Business

- PAC vacancies have been announced and the deadlines to apply are:
 - For CE appointed vacancy (under 25 years of age) – Dec 10
 - For Council appointed vacancy – Dec 17
- Ms. Hudson – Hopes the Council chooses folks who have proven experience working with diverse populations.

4. Meeting Adjourned at 7:31pm