

President's Task Force on Policing in the 21st Century
Office of Community Oriented Policing Services
U.S. Department of Justice
145 N Street, N.E. 11th Floor
Washington, DC 20530

POLICY & OVERSIGHT LISTENING SESSION:

**The Challenges of Oversight & Public Accountability in the Department of Justice's (DOJ)
Office of Community Oriented Policing Services & Local Police Departments**

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on the behalf of the Malcolm X Grassroots Movement:
New York People's Self Defensive Campaign

January 28th 2015

Task Force Members:

The Malcolm X Grassroots Movement (MXGM) is an organization of Afrikans in the United States (people of African descent- Black, Afro-Latino/Caribbean) whose mission is to defend the human rights of our people and promote self-determination in our community.

For 15 years, MXGM has been a leader in the work to end racial profiling and police brutality through community organizing, advocacy, policy change, class action litigation, Know Your Rights Workshops, and CopWatch patrols. Our organizing work includes co-founding Peoples Justice 2000, a citywide coalition which led mass protests ultimately resulting in the indictment of the police officers who killed Amadou Diallo by shooting at him 41 times and the closing of the infamous Street Crimes Unit. Today, we sit on the steering committee of Communities United for Police Reform (CPR), a coalition of more than 60 diverse organizations from communities throughout New York City working to reform policing and stem system police brutality and violence. CPR led the 2013 campaign to pass the Community Safety Act, landmark legislation which resulted in the appointment of NYC's first Inspector General and strengthen penalties for police racial profiling.

Several of our volunteers and leaders, including Djibril Toure, David Floyd, and Lalit Clarkson were plaintiffs in two successful lawsuits to reform policing in New York City, *Daniels vs. NYC and Floyd vs. NYC*, which resulted in the landmark decision finding Stop and Frisk, as it was being practiced by the NYPD, unconstitutional.

MXGM has also co-founded NY's CopWatch Alliance. A network of organizations and individuals trained to monitor, document, and prevent police misconduct and brutality in our communities and educate people about their rights during police interactions. In 2014, we trained nearly 1000 people and organizations on Know Your Rights and CopWatch. Ultimately, we provide legal and organizing support for families of victims of police brutality.

Issue

In this statement, we will highlight the beliefs, tactics, and strategies, that create an organizational culture in our law enforcement and judicial system that allows for cases of police brutality to go unprosecuted or get tried unjustly. We are witnessing non-indictments of police officers in predominantly black communities where state-sanctioned killings occur every 28 hours in the United States. This statistic has been widely used since the murder of Trayvon Martin in 2012, and it comes from our national report, *Operation Ghetto Storm: 2012 Annual Report on the Extrajudicial Killing of Black People*. We will also detail how this culture has contributed to challenges in our efforts to create public accountability mechanisms for police departments through civilian and federal oversight of police misconduct. At a federal level we will discuss how a lack of rigor in oversight and reporting from local police departments has led to insufficient data on the extrajudicial killings of black people in the United States.

Policy Implications

Racism and Structural Barriers that influence Police Culture: Our report *Operation Ghetto Storm*, dispels the myth that the United States is in living in a post-racial society. The report highlights the black men, women, and children who have been killed at the hands of police and security officers, along with civilian vigilantes. In addition, the report looks at the ample evidence of police practices that result from:

1. Racial bias and beliefs around suspects being seen as threatening that result in acts of police misconduct. 47% of the extrajudicial killings that occurred among Black people were justified by the state, with a variety of reports that end with them “having no choice but to use deadly force to defend themselves or others.” It is difficult to know the extent to which they actually believe their rationalizations but it is clear that these justifications are deeply rooted in racism and barter in racial stereotypes and dehumanization. These are reduced to accusations that they “felt threatened”; as a result, criminalizing dead black bodies.
2. The close collaboration between police and prosecutors, which is a benefit in homicide investigations, becomes a burden in police shooting cases. In most cases, the prosecutors’ reliance on the cooperation of police creates a fundamental conflict of interest. As a result, prosecutors are often reluctant to assertively pursue these cases, and in recent cases throwing them to a grand jury.
3. Jury bias that results in racially disparate criminal justice outcomes, including no convictions of officers committing extrajudicial killings, false convictions, application of the death penalty, and non-violent drug related convictions of black people.

The presence of implicit bias and racism produce a culture of reckless endangerment where police are not held accountable for police misconduct and brutality which fortifies the structural barriers that exist in our law enforcement and judicial system. Local police departments and their officers are

hardly held accountable for these killings and even less frequently charged in a court of law. In most of the cases Black civilians who are killed by police are unarmed and/or have already been placed under arrest in handcuffs, as supposed to police who commit extrajudicial killings of Black people who are armed. In contrast, both the victims who survive and the perpetrators of “Black-on-Black” crime end up as part of the million Black people incarcerated in the U.S. at any given time, because of the incentive that police and prosecutors have in arresting, prosecuting, and incarcerating Black civilians. In the case of Kyam Livingston in New York City she was arrested after having an argument with her grandmother. While under police custody Livingston was in need of medical attention after experiencing seizures, and was ignored by police officers until it was too late. She died the following morning of July 21st 2013.

Civilian Oversight of Police Misconduct: *Floyd, et al. v. City of New York, et al.* is a federal class action lawsuit filed by two of our activist members David Floyd and Lalit Clarkson. With the support of Center for Constitutional Rights and other coalitions we filed a lawsuit against the New York City Police Department (NYPD) and the City of New York that challenges the NYPD's practices of racial profiling and unconstitutional stop-and frisks. These NYPD practices have led to a dramatic increase in the number of suspicion-less stop-and-frisks per year in the city, with the majority of stops in predominantly black neighborhoods in New York City. On August 12, 2013, a federal judge found the NYPD liable for a pattern and practice of racial profiling and unconstitutional stop-and-frisks in a historic ruling, and on January 30, 2014, the City agreed to drop its appeal, install a federal monitor from DOJ, and begin the joint remedial process ordered by the court in August of 2014 to restore community and police relations.

The Police Benevolent Association (PBA) of New York City has also attempted to make appeals to the joint remedial process and the court has blocked their appeals. The PBA has also provided obstacles for NYC Civilian Complaint Review Board (CCRB) to prosecute police officers involved in incidents of police brutality; Furthermore, in the majority of the cases of misconduct, the NYPD has not taken the CCRB's recommendations into consideration for reform of police practices within their department, and have obstructed police reforms as a point of leverage to renegotiate their union contract with the city government.

Across the Hudson River, in Newark, NJ another major city recently installed a DOJ federal monitor after a federal audit conducted by DOJ found that officers routinely engaged in excessive force and violated citizens' constitutional rights. Last week, the mayor called for the implementation of a Civilian Complaint review board which came under fire from the local Fraternal Order of Police and the President of the Newark's Superior Officer's Association stated, “The police director is civilian oversight of the police department, Police misconduct has to be investigated at the police level.”

This pattern of appeals instigated by city police departments and unions comes from a belief stemming from a culture that allows for them to be unaccountable to the public and to remain immuned from civilian oversight. There is an underlying belief about 'civilians' and their ability to

judge or even discern police officers' conduct that informs the current local, state, and federal policies and practices that keep from having a CCRB for instance, form with subpoena power in the first place.

Federal Reporting & Collection of Extrajudicial Killings Data: The Office of Community Oriented Policing Services (COPS) at DOJ purports to be committed to furthering crime analysis through the funding of community policing officers, resources, training, and technical assistance. The office partners with law enforcement, businesses and other Federal agencies to enhance policing activities and outcomes. The purpose of COPS is to ensure that police and community stakeholders partner in solving our nation's crime challenges especially in communities of color. Unfortunately, federal COPS program itself which provides financial support without sufficient oversight has contributed to the problem of over-policing via police militarization due to the lack of rigor in federal oversight and reporting from local police departments about their data locally.

In our report Operation Ghetto Storm, we discuss how there is no centralized database that keeps track of extrajudicial killings by police. In 2013, the Washington Post reported that with the data the FBI collects, that there were 461 'justifiable killings' at the hands of law enforcement officers. However, as the Justice Department notes, the reporting is not mandatory and not all police departments participate.

As a result, journalists and academics who independently study the issue believe the numbers are incomplete and say there are more than 1,000 such deaths each year. Despite the police departments receiving billions of tax dollars from federal programs, such as the COPS hiring program, there is still no requirement that mandates the police to submit data on the outcomes of our federal or local investment. In the past, because of lack of accounting local police departments were able to subvert their COPS funding to establish SWAT teams. This lack of accounting is by design. With no numbers, there can be no studies, no analysis of trends and no accountability. Nearly all homicides committed by police can be written off as "justified" as currently reported by the FBI.

Last year shortly after the killing of Mike Brown, Vonderrit Myers, and Kajieme Powell, St. Louis Metropolitan Police Department received a 1.8 million dollar grant from the COPS hiring program to hire 15 additional police officers, and proposed hotspot policing as their community oriented policing strategy. In their proposal, they describe the challenges of prosecuting violent offenders responsible for committing gun violence due to a lack of witness/victim participation and suggest that they want to partner with communities in efforts to identify, arrest, and prosecute the individuals responsible, and that hiring 15 new officers will help them achieve this through increased patrols in these high crime areas in St. Louis.

Given the recent shootings and protests in the St. Louis County area, how could DOJ COPS hiring program accept St. Louis Police Department's proposal using these practices? While it has been argued that hotspot policing is effective at reducing crime in neighborhoods, it is also responsible for

creating racial disparities in the amount of arrests happening in traffic and civilian stops across the United States.

Furthermore, St. Louis Police Department has erected a police foundation that solicits funds to the department to purchase resources such as, rifles, tasers, surveillance equipment and street survival training for police officers to name a few. Many police departments nationally are using charitable funds from individual major donors or major corporations to purchase resources that will not restore public safety, and the well-being of our children and families in our neighborhoods. The purchase of these resources are not made public and because they are purchased through a private entity there is no requirements for the police foundation to be held accountable via civilian oversight as well.

Federal Recommendations

Reform policies that dismantle barriers for adequate federal monitoring & data collection: While the federal government may set guidelines for local law enforcement agencies who receive federal funding for resources such as body worn cameras programs, under constitutional principles outlined in *Printz v. United States*, federal oversight and influence is significantly limited over resources like body worn camera programs that are not federally funded. We also call for the elimination of the *Police Bill of Rights* and the numerous civil service rules and judicial policies and procedures that give the police anonymity, freedom from having their behavior recorded and virtual immunity from accountability and prosecution.

Funding should be conditional based on reporting requirements met for police departments: DOJ COPS programs should require local police departments that are applying for funding to disclose their other sources of revenue, grants and donations that support the police departments work. In the case of St. Louis Police Foundation, they could be funding neighborhood public safety initiatives, youth programming, or even establish a fund to support the local police department with the collection of data. Additionally, when police departments talk about their community partnerships it should be a requirement for departments to allocate resources to be given towards social service agencies that can offer individuals who have been traumatized by police misconduct and brutality assistance rather than strictly having police deal with them and their families as a criminal encounter.

Better criteria should be created for funding community oriented policing strategies, especially in communities of color: Department of Justice should look to support a *National Plan of Action for Racial Justice* that will make the United States government compliant with all the norms and standards of the Convention on the Elimination of all forms of Racial Discrimination (CERD) on all levels that can inform the criteria for local community public safety reforms. Police strategies and community level interventions that reduce racial disparities that are evidence informed should be

the standard of the kinds of community oriented policing strategies that DOJ COPS should be funding on a local level to police departments

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